A 000 706 322 5
UC SOUTHERN REGIONAL LIBRARY FACILITY

# WILD'S ANNOTATION

OF THE

# Torrens Land Title Law

## OF CALIFORNIA

*By* EDWARD N. WILD

T
W6437a
1915
c.2

THE LIBRARY
OF
THE UNIVERSITY
OF CALIFORNIA
LOS ANGELES

SCHOOL OF LAW

## ERRATA

On page 64, in the last line preceding the notes, write in the word "subsisting" in place of "substituting."

On page 84, Sec. 63, at the end of the first line, write in the word "charge."

On page 86, Sec. 68, in the heading of the section, write in "with power of sale" in place of "without power of sale."

TORRENS GUARANTEE
TITLE CO.
526 CALIFORNIA BUILDING
PHONE TR. 3497 - LOS ANGELES, CAL.

COPYRIGHT APPLIED FOR, 1915
BY EDWARD N. WILD.

Pasadena, Cal.
NEWS PRINTING COMPANY
1915

# WILD'S ANNOTATION

OF THE

# Torrens Land Title Law

## OF CALIFORNIA

CONTAINING FULL FORMS FOR PRACTICAL USE UNDER ALL SECTIONS OF THE ACT

ALSO

THE DECISIONS OF THE SUPREME COURTS OF THE SEVERAL STATES WHERE THE LAW HAS BEEN IN OPERATION, RELATING TO THE DIFFERENT SECTIONS OF THE ACT.

*By* EDWARD N. WILD
Attorney at Law
Pasadena, California

AUTHOR OF

Wild's Journal Entries, under the Codes of Civil, Criminal and Probate Procedure of the State of Ohio; the first published Annotation of the Municipal Law of Indiana, Etc.

1915

from practice under it, as has been the case under the code of civil procedure, and undoubtedly some of those given in this work will require modification; but they may serve as a basis for practice, which is all I can reasonably expect.

E. N. Wild.

Pasadena, Cal., July 28, 1915.

# THE TORRENS SYSTEM

The purpose of this system is to establish, and certify to the ownership of, an absolute and indefeasible title to realty, under Governmental authority, and as expressed by Judge Shaw of the Supreme Court of California, "It purports to establish a system for the registration of titles to land, whereby the official certificate will always show the state of the title and the person in whom it is vested, and to provide that after the original registration, transfer of the land may be made in the manner prescribed in detail in the act."

The title is established in the person found to be the owner, registered and a certificate of title issued, and afterwards the title to the land can not pass except by entering the transfer on the register and the issuance of a new certificate.

All mortgages, liens and other matters affecting the title to registered land must be noted on the folium of the official register which is set apart for that land.

### Advantages of the System

The advantages of the system will readily be seen, in the facility with which transfers of registered property may be made and recorded and the very small cost of the same. Also in the fact that the owner of a registered title has the authority of the Government behind it. The law will be of special value to real estate owners who are putting on the market tracts of land cut up into lots and smaller tracts. They will find, as has been found in other states, that it will be an inducement for the purchase of lots to advertise and represent that thereafter a certificate of title can be obtained at a very small cost.

### Guarantee Behind a Torrens Registration Title

A land title registered under the Torrens law has behind it the authority of the State of California, and the protection given will be seen by reference to the provisions of the act, as follows:

1.—The decree ordering registration shall forever quiet the title to the land against the rights of all persons, known and unknown, except only as in this act provided. Sec. 16.

2.—The registered owner shall, except in case of fraud to which he is a party, hold the same subject only to the estates and interests noted in the last certificate of title and free from all others, except as noted in Sec. 34. These are treated of under that section, and are;—

(1) A lease not exceeding one year, where there is actual occupation of the land.

(2) Land dedicated as a public highway.

(3) An easement in respect to the land created within one year.
(4) Current taxes, or special assessment.
(5) Such right of action or claim as allowed by this act.
(6) Liens under the laws of the United States which are not required by the laws of California to appear upon the register.

3.—If the registered owner has taken bone fide for a valuable consideration, he is not affected by the fact that some former deed through which he claims was forged, or executed by a person under legal disability. Sec. 38.

4.—Nor by the claims of any person defrauded exercising his rights and remedies under the general law. Sec. 37.

5.—No title adverse to his title shall be acquired by any length of possession. Sec. 35.

6.—No unregistered estate or claim shall prevail against it. Sec. 39.

7.—The certificate of title shall be conclusive evidence of a good and valid title to the land in any action for specific performance of a contract to purchase such land, and in an action for ejectment, partition, or possession. Sec. 41.

8.—The register and certified copies shall be conclusive evidence that the person named therein as owner is entitled to the land. Sec. 42.

9.—No person shall commence any action for the recovery of land adversely to the registered title after one year following the first registration; and that, even though the person be an infant, lunatic, or under any disability. And when the action is brought within the year it must be made to appear that the person bringing such action had no actual notice of the proceedings in time to file his objections. And the provisions of this section shall in no way affect or disturb the rights of any person in said land acquired subsequent to the registration, bona fide, and without knowledge and for a valuable consideration. Sec. 45. In that case any person obtaining judgment against the land must resort to the assurance fund as next shown.

10.—If any person, without fraud or negligence on his part is deprived of any estate in the land, solely by reason of the fraud, forgery omission, mistake, or misfeasance of any registrar, or deputy registrar, in performance of official duties, he may recover its fair value from the assurance fund. If his loss has been caused either wholly or in part by any person other than the registrar or deputy, and judgment against such person can not be satisfied on execution against such person, the amount due shall be paid out of the assurance fund. Sec. 105.

11.—The production of the owners duplicate certificate, whenever a voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to issue a new certificate or to make a memorial in accordance with such instrument and the new certificate or the memorial shall be binding

upon the registered owner and upon all persons claiming under him in favor of every purchaser for value in good faith. Sec. 60.

## REGISTRATION IN OTHER STATES

Many of the governments of the old world have adopted modified Torrens acts. The law of Australia of 1890 has been perhaps the most successful of any of the acts.

In the United States several of the States besides California have adopted varying forms of the act. Illinois in 1897; Massachusetts in 1898; Oregon and Minnesota in 1901 and Colorado in 1903. Washington in 1907; New York in 1908, repealed and a new act passed in 1909.

In Massachusetts its constitutionality was sustained by decision of the Supreme Judicial Court January 3, 1900. (Tyler vs. Judges of the Court of Registration, 175 Mass. 71).

In that State a separate court was established, entitled The Court of Registration, composed of a Judge, an Associate Judge, and a Recorder with the land registration office in Boston, with jurisdiction throughout the Commonwealth. In each district of the State there is an assistant recorder, with whom the application may be filed. In regard to the operation of the act in that State, Judge Chas. T. Davis, of the Court of Registration, says:

"The so-called 'Torrens System' as enacted into law and administered in Massachusetts greatly facilitates and makes safe and convenient, transactions in real estate. The reason is obvious. Under the law the oustanding certificate of title and owner's duplicate are conclusive evidence in all courts of the ownership of the land therein described and the nature and extent of all existing encumbrances, not excepted in Sec. 38. In any deed or mortgage transaction therefore, all that is necessary is for the deed or mortgage to be carried to the Registry with the owner's duplicate certificate, the original and the owner's duplicate certificate looked at to see that the entries correspond, and then pass the papers. A deed or mortgage transaction can thus be consummated on the same day the parties come to terms.

"On the files of the four Registries of the Metropolitan District can now be found many mortgages to savings banks, trustees and trust companies, as well as to individuals; and instances arise where banks loaning large amounts have required the title to the property loaned on to be registered before paying the money over. Such well-known concerns as the Boston Consolidated Gas Company, the Boston Elevated Railway Company, the Fore River Shipbuilding Company, the New England Structural Company, the General Electric Company, the United Shoe Machinery Company, the Bay State Street Railway Company and the Edison Electric Illuminating Company, and numerous manufacturing concerns, have had, or are having, valuable properties registered.

The law is also being made use of with special advantage by real estate owners who are putting on the market tracts of land cut up into house lots. They find it to be an inducement in selling single lots to people of small means to advertise and represent that no cost of examination of title is required, as the land is registered and that a certificate of title can be obtained for $2.50 as the only expense. Two other kinds of cases are afforded relief that was not available before the establishment of the Land Court, viz: cases where the title is good as a matter of fact and law though defective of record; and cases involving the construction of wills where the Probate Court will decline jurisdiction on the ground that the determination of the question is not necessary for the purpose of settlement of the estate.

"By successive steps of legislation since the passage of the original Registration Act of 1898, the Land Court has become the court of exclusive original jurisdiction for all real actions in the State, and a great majority of these actions are now brought in the form of a registration petition.

"Up to the first of January, 1914, 4712 petitions for registration of land had been filed in the Land Court from about 250 of the 363 towns and cities of the Commonwealth. The assessed value of these properties at the time of filing the petitions amounted to $46,343,296. In the four largest Registries of the State 14,198 certificates of title have been issued and 32,984 documents registered. As operations have begun in all of the twenty-one Registries of the State, it is estimated that about 18,000 certificates altogether have been issued.

"In the Suffolk Registry District during the year 1913 there were 49,272 unregistered entries, and 5,636 registered entries, showing that in about fifteen years about 10% of the business of Suffolk County had shifted to the new system. In ten years more it is probable that not less than one-quarter of the business of this county will then be under the Torrens System.

"On the first day of January, 1914, the assurance fund in the hands of the State Treasurer amounted to $225,442.00. But one claim against this fund has been made since the law went into operation, and that is of small amount."

In Illinois the Torrens act is very similar to that of California, but changes have been made from time to time since the original adoption, which was May 1, 1897, making more specific provisions, and the same will quite likely be required in some sections of our own law. The act was held constitutional in People vs. Simon, 176 Ill. 165.

The following letter from the Registrar of Cook County, at Chicago, and the accompanying report of business done will fully explain the situation in that county:

REGISTRAR OF TITLES, COOK COUNTY, ILLINOIS.

Chicago, December, 29th, 1914.

Mr. E. N. Wild, 85 North Orange Grove Ave., Pasadena, Cal.

Dear Sir: In reply to your favor of December 23rd, 1914, in regard to information relative to the Torrens System, beg to advise, we can say that it has been an uphill fight to have the people get acquainted with the Torrens System and to gain their confidence. No money has ever been appropriated for the purpose of advertising this system. A great deal of credit is due the Cook County Real Estate Board, which has taken up the system and endorsed it and have had neighborhood dinners in every section of Chicago, quarterly, attended by real estate men and bankers, at which lectures have been given by men familiar with the system; on the other hand the title companies have paid commissions of ten per cent on the amount of business brought to them by real estate men, lawyers and bankers, which made an army of commission salesmen working against the system, but at last it has got over the hill and is coming fast. We can safely say that we expect during the year 1915 a large increase over 1914 and so on year after year.

Also, attached report will give you an idea of the work done each year under the Torrens System.

Hoping this information will be of some value to you in your efforts, I remain,

Very truly yours,

JOSEPH F. CONNERY,

Registrar.

ANNUAL REPORT OF THE TORRENS SYSTEM

| | TRANSFERS | | | INCUMBRANCES | |
|---|---|---|---|---|---|
| Year | Number | Consideration | Year | Number | Consideration |
| 1899 | 20 | $ 31,125.00 | 1899 | 21 | $ 61,750.00 |
| 1900 | 48 | 98,860.00 | 1900 | 30 | 30,300.00 |
| 1901 | 55 | 198,170.00 | 1901 | 41 | 80,430.00 |
| 1902 | 165 | 384,850.00 | 1902 | 93 | 172,275.00 |
| 1903 | 309 | 741,030.00 | 1903 | 173 | 242,620.00 |
| 1904 | 445 | 1,142,410,00 | 1904 | 268 | 510,730.00 |
| 1905 | 748 | 1,254,049.00 | 1905 | 435 | 1,023,734.00 |
| 1906 | 988 | 1,607,189.00 | 1906 | 621 | 1,163,777.00 |
| 1907 | 1076 | 1,414,181.00 | 1907 | 701 | 1,158,771.00 |
| 1908 | 1006 | 1,683,337.00 | 1908 | 682 | 1,510,067.00 |
| 1909 | 1253 | 2,186,587.00 | 1909 | 1085 | 2,205,041.00 |
| 1910 | 1725 | 3,295,850.00 | 1910 | 1268 | 2,450,260.00 |
| 1911 | 2014 | 3,235,138.00 | 1911 | 1502 | 2,828,333.00 |
| 1912 | 2243 | 3,352,230.00 | 1912 | 1882 | 4,045,379.00 |
| 1913 | 3333 | 5,367,548.74 | 1913 | 2643 | 5,506,214.16 |
| 1914 | 3840 | 4,581,814.41 | 1914 | 3189 | 7,626,162.49 |

APPLICATIONS FOR INITIAL REGISTRATION

| Year | Number | Value of Property |
|---|---|---|
| 1907 | 257 | $ 786,500.00 |
| 1908 | 394 | 1,037,668.00 |
| 1909 | 545 | 2,076,875.00 |
| 1910 | 618 | 1,629,225.00 |
| 1911 | 649 | 2,809,425.00 |
| 1912 | 784 | 2,985,500.00 |
| 1913 | 916 | 4,167,707.00 |
| 1914 | 916 | 3,743,247.00 |

IN CALIFORNIA—DECLARED CONSTITUTIONAL

A former Torrens land law was passed by the legislature of California March 17, 1897, but very few tracts of land have been registered under it, owing to defects in the law which have been remedied in the present act. The consideration of the act, however, came before the Supreme Court of the State, in the case of Robinson vs. Kerrigan reported in 151 Cal. Reports, p. 42, where the validity of the act was the sole question presented to the court. Judge Shaw rendered the decision of the court, and by reason of its application to the present act, it is well to quote his entire decision, which is as follows:

"The object of the act is well stated in its title. It purports to establish a system for the registration of titles to land, whereby the official certificate will always show the state of the title and the person in whom it is vested, and to provide that after the original registration, transfer of the land may be made in the manner prescribed in detail in the act. As a foundation for the system, it is necessary to have the title established. To that end a proceeding is authorized whereby such title may be settled and declared by a decree of the superior court. The title thus established is to be certified by the County Recorder, and the certificate is made conclusive evidence of title in the person therein named as the owner. The principal point urged in opposition to the issuance of the writ is that the proceeding thus provided for is unconstitutional, because,

"1. It would deprive persons of property without due process of law.

"2. It would deprive persons of equal protection of the law.

"3. It commits to the judicial department of the state functions which are not judicial in character, but purely administrative and executive, contrary to sec. 1 of artincle III. of the state constitution, prohibiting one department of state from exercising functions belonging to another.

"It is necessary to give a brief statement of the essential features of the provision to establish and register titles.

"Any person owning land which he desires to bring under the operation of the act, may avail himself of this proceeding. He is required to file in the Superior Court a verified petition, setting

forth his name, occupation, residence and post office address; whether married or single, and if married the name and residence of the husband or wife, the description of the land, and a statement of his estate or interest in it; that the land is occupied or unoccupied, as the case may be, and if occupied, the name and post office address of each occupant, and the interest or estate such occupant has or claims in the land; the liens and incumbrances thereon and easements therein, the name and address of the holder thereof if known; whether or not any other person has or claims any estate or interest of any character in the land, and the name and address, if known, of every such person and the nature of the estate or interest owned or claimed by him; and the name and address of all the owners of the adjoining lands, so far as the same can be ascertained. The petition must be accompanied by a plat of a survey of the land made by a county surveyor, or a licensed surveyor, with a verified or certified abstract of title, made by some person or corporation, thereunto authorized as specifically provided in the act. (Sec. 6). The court must examine and determine from the abstract of title, whether or not it shows the title to be in the petitioner as alleged, and if it so determined it shall thereupon appoint a day for a hearing of the petition. (Sec. 12). Notice of the time and place of the hearing must be given by four weeks publication in some designated newspaper, of general circulation. Notice then must be served in the manner prescribed for service of summons in a civil action, either personally or by publication, as the facts may require, upon all parties shown by the petition, or by the abstract of title, to be interested, and also upon the husband or wife of the petitioner and upon the owners of the adjacent lands. (Sec. 13).

"We construe this provision for service of notice to mean that the service to be thus made on these persons must be personal service, except in those cases wherein, under sections 412 and 413 of the code of civil procedure, service may be made by publication, and that service upon such persons by publication must be made upon affidavit and order, as in those sections provided, and for the period and in the manner therein required.

"Upon the hearing, if the court finds in accordance with the petition, it must make and enter a decree that the petitioner is the owner of the land, accurately describing it, attaching thereto a diagram thereof and setting forth the particulars of the liens, encumbrances and easements, and an appeal may be taken thereupon as in civil cases. (Sec. 15).

"The decree when it becomes final, is made conclusive of the title and estate therein declared and described, against the rights of all persons, known or unknown, whether named in the proceedings or not. (Sec. 17). A certified copy of the decree is to be filed with the county recorder, who is described as "registrar,' for the purpose of the act, and upon it he is to issue a certificate of title to

the person named in the decree as owner, and make an entry thereof in a book kept in his office for that purpose. (Sec. 22, 23.). The land thereupon becomes 'registered land' and the owner named in the certificate thereupon holds it free from every claim, except those noted in the certificate. Subsequent transfers of such 'registered land' are to be made and entered in the manner prescribed in the act, and certificates thereof are to be issued by the registrar to the transferee, which shall be conclusive evidence of his title as therein stated. Any person who has been, or would be defrauded by the decree, and who has no actual notice of the proceedings, may maintain an action to establish his right, against the registered owner, at any time within five years after the first registration.

"1. It is conceded as a matter of course, that there would be no want of due process of law, if the proceeding affected only the persons who are named in the petition, and who consequently must be served with notice, either personal, or by publication, in the same manner as in the case of a summons in a civil action. The objection in this respect, is that the decree, by the terms of the act, will preclude persons who are not named, persons who really own the land, or an interest therein, but who, because of the fact that their claim or their existence are unknown to the petitioner, are not named in the petition, and who consequently will not receive any notice except that afforded by four weeks publication, required by the act, and who may have no actual knowledge of the proceeding, or of the decree.

"The proceeding is, in all important particulars, of similar character to that provided by the act of 1906, known as the 'McEnnery Act." (Stat. 1906, p. 78). In that act it was expressly provided that the proceeding to establish title therein authorized, should be had against all person claiming any interest in, or lien on, the land, whether known or unknown, and that, if the required notices were given and served, the decree should be conclusive and binding on all persons whether named or not, although, as to those not named and unknown, the act required no notice except by publication. In the case of the Title and Document Restoration Co. v. Kerrigan, 150 Cal. 289, that act was attacked as unconstitutional in the same particulars as those here urged against the Torrens Law, and it was declared to be valid and constitutional. The reasons for holding that act valid are set forth in length in the elaborate opinion of Justice Sloss, rendered in that case. They are fully applicable to the case now under consideration, and we refer to that opinion for a full answer to the objection that the Torrens law does not provide for due process of law, nor afford to all persons the equal protection of the law.

"The state has full control over the subject of the mode of transfers and establishing titles to property within its limits. For

these purposes the state has power to provide a special process in the nature of a proceeding *in rem,* to fix the status of the land and declare the nature of the titles and interests therein and the person or persons in whom such titles and interests are at the time vested. It may do this whenever it may be considered necessary or likely to promote the general welfare.

"2. The proposition that the proceeding is judicial and not administrative, that it is properly a matter for the judicial department, was also fully considered and established in Title, etc., v. Kerrigan, 150 Cal. 289, and the reasons there given apply here.

"The claim in behalf of the defendant in this particular seems to be based on the theory that there is, or may be no adverse party to the proceedings, that it may be had where there is in fact no adverse claim, lien or incumbrance to or upon the land, and hence that it is not adversary in character. That it may not become adversary in this sense is of course conceded. It would not necessarily follow that the proceedings were not judicial. It needs no citation of authorities to establish the proposition that the power of a court to entertain an action does not depend upon the appearance of the defendant and his active opposition to the claims of the plaintiff.

"The contention is further made that judicial power can be exercised only to settle existing disputes and controversies, and that if none exist, the act of merely describing and declaring an undisputed title is necessarily administrative and can not be performed by the judicial department. This argument does not fully meet the case. It may be admitted that the existence of controversies which could not be settled by the interested parties was the primal cause for the institution of courts with power to adjudge between the parties to the strife. But the refinements of civilized life, and the necessity for the orderly regulation and determination * * * have long required the extension of the judicial power beyond the settlement of controversies which have actually arisen, so as to include the function of providing security against disputes and claims which may arise. * * *

"In the case of the Torrens law, the plan for a new method for registering and transferring titles made it necessary that the absolute title should first be established and declared. A *status* or right was to be established, declared and made conclusive, as the foundation for subsequent proceedings and transactions. This was a sufficient cause for placing the property to be thus affected within the jurisdiction of the court as a *res,* the ultimate right and title to which could be there adjudicated, after reasonable notice to all possible claimants to appear and assert their claims. Whether or not this is strictly in exercise of judicial power, as originally instituted, it can not be denied that it is a power of the class which, from time immemorial has been committed to, and exercised by, the courts.

"3. The claim is made, although not argued, that by sections 48, 49, 55, 58, 59, 60, 61, 64, 67 and 68 of the act the registrar is given judicial powers. These sections require the registrar to note upon the duplicate certificate of title in his office, the existence and general character of instruments creating liens, incumbrances, trusts, powers or leases affecting the land described in the certificate. The point is that the registrar is required to determine the legal effect of these instruments, and that this is a judicial function which can be given only to a judicial officer. There is no force to this objection. Every administrative officer is frequently called upon, in the discharge of his duties, to decide questions of law relating thereto. The recorder is required to determine whether an instrument presented for record is a deed, a mortgage, a lease, a notice of action, or what not, so as to record it in its proper book. The sheriff must often determine for his own guidance in making a levy, the ownership of property. The clerk must determine the nature and legal effect of papers filed with him, and perform the appropriate duty respecting them. The duties required for the registrar by these sections are of the same nature. His decision in the matter is not conclusive. If he decides wrongfully and refuses to perform the appropriate duty in the premises, he may be compelled to act properly by means of a writ of man- of purchasers in good faith of land registered under the act, and damus, the same as any other ministerial officer who mistakes his duty under the law and refuse to perform it.

"4. It is claimed that the act is special, because it makes special provisions regarding the statute of limitations, the rights other matters peculiar to lands which are brought within its provisions. We perceive no merit in this contention. The fact that the land thus registered may be conveyed and transferred by means different from that required as to other lands, and the necessity for a special proceeding as a foundation for the system, creates a separate class of such registered lands, and another special provision of law on the subject, applying only to such registered lands, the owners thereof, or persons interested therein, or to the procedure whereby the system is to be inaugurated.

"5. The claim is made that the act violates the provisions of Sec. 24, of article 4 of the constitution, that "Every act shall embrace but one subject, which subject shall be expressed in its title.' The provisions of the act relating to the subjects of felonies, county officers, principal and surity, etc., are all germain to the general subject there expressed, and taken together they compose a part of the general scheme and are appropriate to effect the main object of the law, and do not render the act unconstitutional."

In view of the foregoing decision, it is not likely that any question will be raised as to the constitutionality of the present act, and it can therefore be acted under at once.

A system of practice will gradually be evolved, as has been the case in other states, and there will probably be a number of questions to be settled in regard to operations under the different sections of the act, for some of them are general in their character and not as definite in their terms as in other States.

## PROCEDURE FOR BRINGING LAND UNDER THE ACT FOR REGISTRATION OF TITLE

PETITION.

The application for registration of title is made by a petition to the Superior Court of the State in and for the county where the land is located, except that when the land lies in one body, partly in two or more counties, the proceedings may be brought in either county.[1] The petition will be filed in the office of the county clerk.

The petition therefore becomes the basis of all the proceedings and should be most carefully drawn, to comply with the provisions of the act. Its requirements are set forth in Sec. 5.

Any interested persons who have not joined in the petition may be served with notice as defendants, and so made parties to the proceeding.[2]

Provided also that all persons having or claiming any interest in the land may assent in writing to the registration and need not then be made parties defendant.[2]

SURVEY.

A plat or plan of survey of the land made by the county or a licensed surveyor, must accompany the application, unless the land is part of a city, town or subdivision of which a map or plat made and verified, or an official map, is on file in the office of the recorder and upon such map the land appears in such manner that it can be identified thereon by reference, in which case the application may refer to such map.

ABSTRACT OF TITLE

An abstract of title made as provided by the act, must accompany the application, except where registration is asked for on the ground of actual, exclusive and adverse possession for more than five years, by the applicant or his predecessors in interest, and proven to the satisfaction of the court.[3] In which case an abstract is not required.

When the title to the land has been previously determined by a final decree of a court of competent jurisdiction, the abstract need not antedate the decree..[3]

When the title to the land has been previously insured by a corporation transacting business in insuring titles to real estate and a policy of insurance has been issued such policy may be made the starting point of the abstract.[3]

---

[1]Sec. 5
[2]Sec. 12.
[3]By Sec. 6.

EXAMINER OF TITLES.

When an abstract is filed, the court will itself examine it or may refer it to an examiner of titles, to be appointed by the court.[4]

NOTICE OF FILING OF PETITION.

If it appears to the court from its own examination of the abstract of title, or from the report of the examiner, or from the petition alone, where no abstract is required, that the title to the land is substantially as alleged in the petition, the court will order notice to be given of the filing of the petition.[5]

When notice is ordered it shall be issued and served according to the directions of Sec. 12. In all cases publication of the notice must be made in a newspaper of general circulation published in the county, to be designated by the court, for four consecutive weeks.

In all cases assents in writing may be filed by the interested parties in the form provided, and such persons need not be served with notice.[6] The applicant should therefore obtain all assents possible from interested parties and from adjoining land owners, to save time and expense in making service. The assents may be attached to the petition or filed separately.

HEARING OF THE APPLICATION.

After all persons interested have been served and the time for appearance has expired, the case will be set down for hearing on like notice as in other civil actions, and the court will proceed to hear the case upon all the testimony and evidence offered and the objections made, and determine the title to all the land described in the petition, and will make and enter a decree confirming the title of the person found to be the owner of the land or any part of it, and order the registrar to issue a certificate of title therefor.[7]

DECREE AND CERTIFICATE.

Immediately upon the filing with the registrar of a certified copy of the decree he will make an entry in a book to be kept by him,[8] to be known as the "Register of Titles," and this entry constitutes the original certificate of title. He will also make a copy of this entry and deliver it to the owner of the land; this is the duplicate certificate.[9] This constitutes the registration.

TRANSFERS—AFTER REGISTRATION.

From the time the first certificate is issued all dealings with the land are completed by filing with the registrar the instrument

[4]See Secs. 11, 18, 19.
[5]Sec. 11.
[6]Sec. 12.
[7]Sec. 14.
[8]Sec. 29.
[9]Sec. 23.

of transfer or creating an incumbrance, accompanied by the owner's duplicate certificate.[10]

Like forms of deeds, mortgages, leases and other instruments as used in other cases are used in dealing with registered land[11] But the act does not provide for the same being recorded as in other cases, but only that they be filed with the registrar and retained in his office.[12] But an instrument duly acknowledged, indorsed on the duplicate certificate of title, in the form given, shall be sufficient to transfer the property.[11]

Except in this last case a new certificate will be issued on every change of title.

### Mortgages and Liens

and other instruments, less than a transfer, are noted on the original and duplicate certificates.[13]

The cases of trusts, judgments, homestead and community property, tax sales and other matters are all treated of under their appropriate heads, and need not be repeated here.

### Assurance Fund.

An important feature of the Torrens system is the Assurance fund, for the reimbursement of loss to parties which may be sustained by the misfeasance or negligence of a registration officer, or by reason of fraud on the part of some one from whom title has been derived. The fund is available by the person who is deprived, without fraud or negligence on his part, of any interest or estate in land and who "is precluded from recovering such interest or estate."[14] This provision is evidently made in recognition of the fact that the title of the holder of the certificate of registration is indefeasible and the fund is intended to reimburse the person who has lost it. The innocent holder of the estate is secure in his possession, no matter what fraud or negligence may have preceded his acquisition.

The practical working of this provision is shown by the experience of other States. On the first day of January, 1914, the assurance fund in the hands of the State Treasurer of Massachusetts amounted to $225,442.00 and but one claim and that a small one, against it had been made since the law went into operation in 1898.

---

[10]Sec. 48.
[11]Sec. 53.
[12]Sec. 51.
[13]Secs. 7, 34.
[14]Sec. 105, Sub. 2.

# LAND TITLE LAW

## SECTIONS AND FORMS


1. Registrars and deputies ..... 19

5. Land—Owners—petition ..... 20
   (1) Petition for registration ..... 24
   (2) Petiton for registration—Personal form ..... 25
   (3) General petition for registration ..... 26

6. Plat—Survey—Abstract—Adverse possession ..... 31
   (4) Order for survey ..... 36
   (5) Same, to determine line of public way ..... 37
   (6) Order that abstract be frunished when, etc ..... 37
   (7) Bond of persons making abstracts aproved ..... 37
   (8) Order for increase in amount of bond ..... 38

7. Fee to be first registered ..... 38

8. First registration of a tax title ..... 38

9. 9. Amendment of application ..... 39
   (9) Order for amended petition ..... 39
   (10) Same on motion of applicant ..... 39

10. Lis pendens ..... 40

11. Order for notice of filing petition ..... 40
   (11) Order that notice be given ..... 41
   (12) Report of examiner approved and notice ordered ..... 41
   (13) Order refusing notice and dismissing petition ..... 42
   (14) Same on report of examiner of titles ..... 42

12. Notice and service thereof ..... 42
   (15) Notice of filing of petition ..... 44
   (16) Publication of notice approved ..... 45
   (17) Affidavit of service of notice by other than sheriff ..... 46
   (18) Same—of service by mail ..... 46
   (19) Answer objecting to registration ..... 46
   (20) Assent to registration ..... 47

13. Guardian ad litem ..... 47
   (21) Appointment of guardian ad litem ..... 48

14. Hearing of pettion ..... 48

15. Decree of registration ..... 49
   (22) Decree for registration ..... 50

16. Effect of decree ..... 53

17. Registration in other proceedings ..... 54
   (23) Application for notice, etc ..... 55
   (24) Order that notice of intention to include registration be given ..... 55
   (25) Notice of intention to include registration, etc ..... 55

18. Abstract referred to examiner of titles ..... 56
   (26) Order referring case to examiner of titles ..... 56
   (27) Order sending case to referee to report facts ..... 57

19. Report of examiner ..... 57
   (28) Report of examiner of titles ..... 58
   (29) Report approved ..... 60
   (30) Report considered and further proof ordered ..... 60

20. Application may be withdrawn ..... 60
(31) Request for withdrawal of application ..... 61
(32) Allowing application to be withdrawn ..... 61
21. On death or disability of applicant ..... 61
(33) On death, etc., representative made party ..... 61
(34) On transfer of interest, action continued, etc ..... 62
(35) On transfer of interest, transferee substituted ..... 62
22. Registration and certificate—Delivery of duplicate ..... 62
Form of book for receipts ..... 62
23. Certificate of title ..... 63
(36) Certificate of title—Form ..... 64
24. Form of certificate ..... 65
25. Tenants in common ..... 66
26. Certificates exchanged ..... 66
(37) Memorial on cancelled certificate when one for several 66
(38) Memorial when several issued for one ..... 66
27. On loss of duplicate ..... 67
(39) Application for certified copy of certificate ..... 67
(40) Order granting request, without notice ..... 67
(41) Notice of application ordered ..... 68
(42) Order granting request after hearing ..... 68
(43) Order for certified copy to be used as evidence ..... 68
28. Correction or change in certificate ..... 68
(44) Application for change of name in certificate ..... 68
(45) Order granting application—without notice ..... 69
(46) Order granting—after hearing ..... 69
29. "Register of titles" ..... 70
30. Receipt for duplicate certificate ..... 70
31. When land deemed to be registered ..... 70
32. When transfer deemed to be registered ..... 70
33. Complaint against registrar ..... 71
34. Registered owner holds subject to what estates ..... 71
35. Adverse title not acquired by possession ..... 72
36. Transferee need not inquire into previous registration ..... 72
37. Fraud and forgery ..... 72
38. Deed forged, ets ..... 72
39. Title not affected by unregistered estate ..... 73
40. Certificate conclusive evidence ..... 73
42. Register received as evidence ..... 73
43. Memorial carried forward ..... 73
44. Dealings with land after registration ..... 73
45. Time limitation for adverse actions ..... 74
46. Registration in probate proceedings ..... 74
47. Notations on instruments filed ..... 75
(47) Notations on back of deed transferring registered land 76
48. Transfer of registered land ..... 76
(48) Memorial on certificate cancelled by transfer ..... 77
49. Transfer of part ..... 77
(49) Endorsement on certificate of subdivided tract, etc.. 78
50. Date of filing marked on instrument ..... 78
51. Instruments retained in registrar's office ..... 78

52. Certified copies ..... 79
53. Forms of instruments ..... 79
54. Name, etc., of grantee ..... 79
(50) Notice of change of address ..... 80
(51) Certificate of notice and process ..... 80
(52) Order for further or different notice ..... 80
55. Instruments to take effect as contracts ..... 80
56. When transfer is subject to tax sale ..... 81
57. Community property ..... 81
58. Affidavit of transferee ..... 81
(53) Affidavit of transferee ..... 82
(54) Affidavit of executor, etc., transferee ..... 82
59. Mortgages, etc., on registered land ..... 82
60. Memorial of, or new certificate binding on all ..... 82
(56) Order allowing memorandum, etc, without duplicate certificate ..... 83
61. Instruments filed in duplicate ..... 83
62. Certified copies of instruments ..... 84
63. Assignment of a charge ..... 84
(57) Memorial of assignment of charge ..... 84
(57a) Same, of part of charge ..... 84
64. Release of a charge ..... 84
(57b) Memorial of release of whole or part of charge ..... 85
65. Charges enforced as in other cases ..... 85
(58) Notice of pendency of suit to foreclose, etc ..... 85
66. Power of attorney ..... 85
67. Deeds in trust—how noted in certificate ..... 86
68. Trustee with power of sale ..... 86
69. Trustee without power of sale ..... 86
70. Trustee under will ..... 86
71. Distribution, etc., of registered land in other proceedings made as in othercases ..... 86
72. Order for certificate or memorial ..... 87
(59) Order in decree for transfer, etc., that certificate issue 87
73. Certified copy of decree filed ..... 87
74. Sales by executors, etc., confirmed ..... 87
(60) Order for certificate when sale confirmed ..... 88
75. When executor given power of sale by will ..... 88
(61) Order that words "with power of sale" be registered .. 88
(62) Order in decree confirming, for certificate ..... 88
76. Certificate or memorial conclusive evidence ..... 88
77. Tax sale of registered land—Notice by purchaser ..... 88
(63) Notice of purchase of ..... 90
(64) Notice that registered land has been sold to State .... 90
78. Tax deed filed ..... 90
(65) Application by tax purchaser for decree ..... 91
79. To whom notice sent ..... 91
(66) Order that notice be given of tax purchasers application 92
(67) Notice of application for decree ..... 92
80. Decree and certificate on hearing ..... 93
(68) Decree showing title invested in holder of tax deed .... 93

81. When State or municipality is purchaser ..... 93
82. How notice required in Sec. 79 served ..... 94
83. Redemption from tax sale ..... 94
84. Partition of registered lands—Proof as to parties ..... 94
85. Lands allotted by commissioners ..... 94
86. Land sold in partition proceedings ..... 94
(69) Certificate of officer making sale ..... 95
87. Lien on undivided interest attaches to what ..... 95
88. Sale of registered land to satisfy judgment ..... 95
89. Lis Pendens ..... 95
90. When suit, etc., disposed of ..... 95
91. When judgment becomes a lien on registered land ..... 96
92. Levy on registered land certified to registrar ..... 96
(70) Certificate of levy ..... 96
93. Mechanic's lien ..... 97
94. Ordinance for public improvement ..... 97
(71) Notice of ordinance to lay out or improve street ..... 97
(72) Notice of repeal of ordinance ..... 97
(73) Notice that lien under ordinance is satisfied ..... 98
95. When lien deemed to affect title of registered land ..... 98
96. Certificate of clerk of suit, etc., to be filed ..... 98
(74) Certificate of clerk of suit dismissed or judgment satisfied ..... 98
(75) Certificate of sheriff of release of levy, etc ..... 98
97. Alterations, etc., of certificate or memorandum ..... 99
98. Application for order correcting, etc ..... 99
(76) Petition by registered owner for correction or alteration of certificate ..... 100
(77) Order that summons issue ..... 100
(78) Form of summons ..... 101
(79) Order for correction, by consent ..... 101
(80) Order for correction on hearing ..... 101
99. Form of memorial referred to Court ..... 102
(81) Form of memorial referred to Court on registrar's certificate ..... 102
(82) Same on suggestion of party ..... 102
(83) Order prescribing form of memorial ..... 102
100. Fees under this act ..... 103
101. Right of eminent domain not affected ..... 104
102. Property indices ..... 104
103. Name indices ..... 105
104. Partition of registered land ..... 105
105. Torrens Title Assurance fund ..... 105
106. In case of fraud ..... 107
107. Appeal ..... 107
(84) Notice of appeal given to registrar ..... 107
108. Deputy recorders and registrars ..... 107
109. Subdividing registered land ..... 108
110. Permanency of documents ..... 108
111. Fraud and forgery how punished ..... 108
115. Act construed liberally ..... 109

## LAND TITLE LAW

As enacted by the People of the State of California at the general election held November 3, 1914.

An act to amend an act entitled "An act for the certification of land titles and the simplification of the transfer of real estate," approved March 17, 1897.

The people of the State of California do enact as follows:

An act entitled "An act for the certification of land titles and the simplification of the transfer of real estate," approved March 17, 1897, is hereby amended to read as follows:

REGISTRARS AND DEPUTIES.

Section 1. Recorders and ex officio recorders in the several counties of this state shall be registrars of titles in their respective counties, and their deputies shall be deputy registrars (**a**). All laws relative to recorders and their deputies, including their compensation, clerk hire, and expenses, shall extend to registrars and their deputies, so far as the same may be applicable, except as otherwise provided in this act (**b**). Registrars of titles shall be county officers within the meaning of the laws of this state.

Sec. 2. The official bonds now required by law to be given by recorders before entering upon the discharge of their duties, shall also apply to and cover the faithful discharge of their duties as registrars, and of their deputies, whether such additional condition be specifically provided for in such bonds or not; provided, however, that recovery on such bond be had only for damages sustained through the gross or wilful negligence or gross or wilful neglect of duty or gross or wilful mismanagement on the part of such recorder or registrar or any of his deputies.

Sec. 3. Deputies may perform any and all duties of the registrar, in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar.

Sec. 4. Registrars and deputy registrars are prohibited from practicing law, or acting as attorneys or counselors at law, or having as a partner a lawyer or any one who acts as such, or from acting as searchers of title under this act, excepting only such deputies as may be appointed as attorneys pursuant to the provisions of section 108 of this act.

LAND—OWNERS—PETITION.

Sec. 5. All lands[15] may be brought under the operation of this act by the owner,[16] or owners,[17] of any estate or interest therein

---

[15]The Land Court may register the title to an estate in fee under a Rail Road location, although the rights of the rail-road corporation, assuming them to have been acquired by eminent domain, are substantially permanent and practically exclusive so long as the land is used for the purpose of a rail-road. Battelle vs. N. Y., N. H. and H. R. R. R., 211 Mass. 442.

Title to certain land which was procured by fraudulent and false representations, could not be registered against the objection of the person from whom the title was procured, because such owner has a right to avoid the deed as procured from her by false representations. Robinson vs. Richards, 209 Mass. 295.

[16]Owner—Record title.

The Torrens act of Minnesota provides, as does the California act, that the "owner" may have his title registered, etc. Held, that any owner of land whether his title be of record in the office of the recorder of deeds or not, may maintain proceedings to register his title under the act. National Bond and Security Company vs. Alderson, 99 Minn. 137.

The contention that the act contemplates registration only, at the instance of a fee title owner in possession, and not by an "apparent owner," who is not in possession, we think can not prevail. The purpose of the statute is to provide a speedy and sure remedy to clear up title to land.

The title provided is not a substitute for an action of ejectment and a successful applicant may have to resort to ejectment to obtain possession. The statute furthermore in several places makes provision looking to cases where the land is occupied by another than the applicant. Nor can we sustain the contention that the applicant's title must be settled before he can apply. The very purpose of the act is to settle the title. Peters vs. City of Duluth, 119 Minn. 96.

Lack of record title not a bar to registration. Browning, Petitioner. Mass. Land Court Decisions, 5.

What lands may the owner include in one registration?

Can several pieces of land belonging to the same owner, contiguous, or not contiguous, not derived from the same source, be registered in one proceeding?

The provisions of the California statute in regard to such questions are not as specific as in the Massachusetts and Illinois acts. But there seems to be no objection to an affirmative answer to the foregoing question. Sec. 11 refers to one or more abstracts being presented with the petition, and of course abstracts would be required for each piece of land, in cases where abstracts are required.

[17]What owners can unite in one registration proceeding?

Can several persons owning in severalty different pieces of land unite and ask registration of all the pieces in one proceeding?

It would appear that an affirmative answer can be given to this from the provisions of this Section 5, that "if the application is by more than one person, any one of whom claims title in severalty to any part of the land described in the petition, the particular part of the land to which each petitioner severally claims title" must be set forth in the petition.

Also Sec. 14 provides that the court "shall proceed to determine the title to all the land described in the petition and of all persons who may have any interest therein or in any part thereof," and Sec. 15 provides that upon the decree being filed with the registrar, he "shall

whether legal or equitable.[18] (other than an undivided share or an easement) by filing with the county clerk his or her or their verified petition (1-2-3) to the superior court of the county within which such land is situated, which petition shall set forth the following facts, to wit:

(*a*) The full name, occupation, residence, and post-office address of the applicant or applicants, and where any applicant appears by any representative because of any disability, also, the full name, occupation, residence and post-office address of the person so representing the applicant and the reasons for his so acting; (*b*) if the application is by a corporation [19] its name, when and where incorporated, its principal place of business and the names and post-office addresses of its president and secretary, or if none, its executive officers; (*c*) whether or not the applicant is married and if married, the full name and residence of the husband or wife; and if unmarried, whether he or she has been married, and if so, how the marriage relation terminated, and if the marriage relation was terminated by annulment or divorce, where and by what court; (*d*) that each of the applicants is of the full age of twenty-one years and free from any disability, or if a

---

thereupon issue a cretificate of title to each person declared by said decree to be the owner of any parcel of land in severalty."

[18]What interest must the applicant have in the land?

The limitation in Sec. 5 sounds very broad, but we find that no provision is made for the initial registration of a lesser estate than a fee simple; and by Sec. 7, no lesser estate shall be registered unless the fee simple to the same land shall be first registered. Then after such registration the lesser estate shall be noted upon the certificate of title. It therefore appears that only the owner of a title in fee can ask for initial registration.

Under the same provision as ours, in the Illinois act, HELD, That a life estate can not be registered unless the fee simple to the same land has first been registered. Cowan vs. Glos, 255 Ill. 377.

TITLE MUST BE GOOD AS AGAINST THE WORLD.

Evidence establishing the title as against the world is essential to warrant a decree awarding initial registration of a title. Glos vs. Kingman, 207 Ill. 26. Glos vs. Bragdon, 229 Ill. 223. Waugh vs. Glos, 246 Ill. 604. Glos vs. Cesna, 207 Ill. 69.

An applicant establishing title in himself need not show affirmatively, invalidity of defendant's claim of title; burden was on a party claiming a title by tax deed. Glos vs. Hoban, 212 Ill. 222. Glos vs. Holberg, 220 Ill. 167.

The title to be established may be shown by the production of deeds forming a chain of title from the government, or it may be shown by prescription or limitation, as provided for by Sec. 6 (c), and in the code of civil procedure.

As the latter method does not require an abstract of title to be furnished, thus materially reducing the expense, it would seem that it will be very generally used for establishing title.

[19]Where the application for registration is filed by a corporation its corporate existence can not be questioned without a specific denial. Unless the corporate existence of the applicant is thus put in issue by the answer it need not be proved.
Gage vs. Consumers E. L. Co., 194 Ill., 30.

minor or under disability, his age and the nature of such disability; (*e*) a description of the land; (*f*) the value at which the land and permanent improvements, if any, were assessed on the last assessment for county taxation; (*g*) and if the application is by more than one person, any one of whom claims title in severalty to any part of the land described in the petition, the particular part of the land to which each petitioner severally claims title; (*h*) a statement of the estate or interest which each applicant has or claims and whether or not the same is community property,[20] (*i*) or is subject to a homestead,[21] (*j*) or to any easement,[22] lien or incumbrance and if so the name and post-office address, if known[23] of each holder thereof, the nature and the amount of the same, and if recorded, the book and page of the record; (*k*) a statement of whether or not the land is occupied[24]

---

[20]Separate and community property are defined by the civil code as follows:

Secs. 162 and 163, Civil Code of Cal. All property owned by the husband (or wife) before marriage and that acquired afterward by gift, bequest, devise or descent, with the rents, issues and profits thereof is his (or her) separate property.

Sec. 164. All property acquired after marriage by either husband or wife is community property; but whenever any property is conveyed to a married woman by an instrument in writing, the presumption is that the title thereby vested in her as her separate property.

[21]Homestead property is defined by the civil code as follows:

Sec. 1237, Civil Code of California. Homestead consists of the dwelling house in which the claimant resides, and the land on which the same is situated, selected as in this title provided.

Sec. 1262. In order to select a homestead, the husband or other head of the family * * * * must execute and acknowledge * * * * a declaration of homestead and file the same for record.

Sec. 1264. The declaration must be recorded in the office of the Recorder of the county in which the land is situated.

Sec. 1265. From and after the time the declaration is filed for record the premises therein described constitute a homestead.

Sec. 1266 makes a similar provision as Sec. 1262 for selection by any person other than the head of a family.

[22]The complaint properly alleged the existence of easements on each side of plaintiff's property consisting of the right to maintain party walls, as showing the adjoining owner's interest in plaintiff's property to have a similar interest therein. Duffy vs. Rodriguez, 124 N. Y. S., 529.

[23]When, in proceedings under the Torrens act to register title, the applicant fails to disclose to the court the names of persons known to him to have an interest in or lien upon the property, and such parties are not named as parties to the proceedings or served with summons, and do not have actual notice of the proceeding, a judgment rendered thereon is not binding upon such persons. Riley vs. Pearson, 120 Minn., 210.

All claimants known to the applicant, either from the report of the Examiner, or from other sources, must be made defendants. Baart vs. Martin, 99 Minn., 197.

[24]In the absence of proof of her allegation that the premises are unoccupied, an applicant is not entitled to registration of title; even though she introduces in evidence an abstract showing title in her by

and if so, the full name and post-office address of each occupant and what interest he has or claims; (*l*) a statement of any other person who has any estate or claims any interest in the or any part of the land, in law or equity, in possession, remainder, reversion or expectancy,[25] and the names and post-office addresses, if known, of every such person; (*m*) together with the names and post-office addresses of all the owners of adjoining lands, so far as the same can be ascertained upon diligent inquiry. (*n*) If the application is by a husband or wife and the property is community property or subject to a homestead, both spouses must join in the application; (*o*) persons who collectively claim to own the entire legal estate in fee simple to the or any part of the land may join in the petition; (*p*) a corporation may apply by its duly appointed agent; (*q*) the estate of a deceased person by the administrator or executor; (*r*) and a minor or other person under disability by his legally appointed guardian, but the person in whose behalf the application is made shall be named as applicant. (*s*) Land constituting a single parcel and lying partly in two or more counties may be included in one application, which may be made in either county in which the land lies, but the certificate issued therefor must be filed with the registrars of all the counties within which such land is situate.

PETITION—

The caption here given is not really necessary, and is not used in the forms given in either the Massachusetts or Illinois act; and is not recommended by some attorneys in California, on the ground that the proceeding is a petition to the Court and not an adversary one. But the term "defendant" is used in the act itself, and as it is a civil action, and may become adversary in character, and as it is very convenient to have all parties to the proceeding conveniently shown, and because there is no harm done in using the caption of a regular civil action, it appears good practice to use it. It is generally used in Los Angeles County.

---

a chain of title from the Government, with proof that the abstract was made in the ordinary course of business, by a maker of abstracts, and no proof is offered by defendants except to show payment of taxes. Brooke vs. Glos, 243 Ill., 392.

If the applicant alleges that the land is not occupied he should prove the fact, as the allegation is not a negative one which requires no proof, nor is the application itself evidence of the fact. Jackson vs. Glos, 243 Ill., 280.

An allegation in the application to register title that the premises are occupied by the applicant is a material one and must be proved; and it is error to decree registration if the proof fails to identify the premises occupied by the applicant as the premises described in the application. Mihalik vs. Glos, 247 Ill., 597.

[25]Petitioner is required to set forth not only interests which he admits, but also adverse claims though denied by him. Tyler vs. Judges, 175 Mass., 71.

1. (Sec. 5. ) *Petition for registration.*

In the Superior Court of the State of California, in and for the County of .....

D. B.
Petitioner.
vs.
C. H., D. M. and A. D.,
Defendants.

No. .....
Petition for registration of title to land.

To the Superior Court of.....County:

The petitioner herein makes application to have the land hereinafter described brought under the operation of the act for the certification of land titles, etc., enacted by the people of the State of California at the general election held November 3, 1914, and sets forth the following facts:

I.

The full name of the petitioner is D. B.; he is of the full age of twenty-one years and is not under any legal disability.

*Continue as in one of the applications in No. 3. After Item IX add:*

Said land is not subject to any other lien, easement, or incumbrance, nor has any other person or corporation any estate, claim, or interest therein, or in any part thereof, in possession, reversion, or expectancy to his knowledge, and as he verily believes, except as herein set forth.

*At conclusion let the prayer be as follows:*

Wherefore the petitioner, D. B., prays the Court that the land herein described may be brought under the operation of the act above named and for a decree declaring him to be the owner in fee of,[25] and confirming his title to, said land and ordering the registration thereof as provided by said act, and for such other relief as shall be according to law and equity.

.....
Attorney for Petitioner.

State of California,
County of.....

D. B. being duly sworn, deposes and says that he is the petitioner in the above entitled application; that he has *heard* read the foregoing petition and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes it to be true.

D. B.

[25]See Sec. 12, (a).

Subscribed and sworn to before me, ....., a Notary Public, in and for said County and State, this..... day of....., 19.....

A. S. L.,
Notary Public.

A personal form for the petition for registration is frequently used and fills all requirements, as follows:

2. (Sec. 5.) *Petition for registration—Personal form.*

To the Superior Court of California.

In and for the County of .....

I hereby apply to have the land hereinafter described brought under the operation of the act for the certification of land titles, etc., enacted by the People of the State of California, at the general election held November 3, 1914, and pray the Court for a decree declaring me to be the owner in fee of, and to confirm my title to, said land, and ordering the registration thereof as provided by the said act.

Ist.—My full name is .....

Age.....

I am not under any legal disability.

My residence and postoffice address is.....

Occupation.....

I am married to....., whose residence and postoffice address is.....

2nd.—I am the owner in fee simple of the following described land in the State of California, County of....., Towit: (*describe.*).....

*Continue with further allegations as in one of the applications in Form 3, but using the personal pronoun.*

Dated this.....day of....., 19.....

D. B.

State of California,
County of.....

D. B. being by me first duly sworn, deposes and says that he is the petitioner in the foregoing application, that the statements in his petition are true of his own knowledge, except as to those matters which are therein stated on his information or belief, and as to those matters that he believes them to be true.

Witness my hand and seal, this.....day of....., 19.....

A. S. L.
Notary Public in and for said County and State.

Application for registration will frequently be made by several owners of separate pieces of land, in one proceeding, to save expense. The form for a general petition is therefore given embracing several owners of different character.

3. (Sec. 5.) *General petition for registration.*

In the Superior Court of the State of California, in and for the County of.....

D. B., A. M., a minor by L. G., his guardian.
A. E., Administrator of the estate of A. B., deceased.
W. C., M. C., and The C. H. R. Company, a corporation, by L. A., its duly appointed agent.
Petitioners.
vs.
C. H., D. M., and A. D.,
Defendants.

No. .....

Petition for registraiton of title to land.

To the Superior Court of.....County:

The petitioners herein make appliction to have the lands hereinafter described brought under the operation of the act for the certification of land titles, etc., enacted by the people of the State of California at the general election held November 3, 1914, and set forth the following facts:

A.

Each of the several petitioners makes statement for himself or herself that his or her full name is as hereinafter given in his or her application; that he or she is of full age of twenty-one years and not under any legal disability except as hereinfater stated, and that the land hereinafter described as being owned by him or her is not subject to any easement, lien, or incumbrance, nor has any other person or corporation any estate, claim or interest in said land, or any part thereof, in possession, reversion or expectancy, as he or she verily believes, except as hereinafter set forth.

APPLICATION ONE

The petitioner, D. B.[26] has never been married: (*Or* is married, and the full name of his wife is....., and her residence and postoffice address is..... *Or,* has been married, but the marriage relationship has been terminated by the death of his wife. *or,* by divorce given by the .....court of.....at.....

His residence and postoffice address is No.....Street, ..... His occupation is.....

[26]If the petition is filed by two or more persons as tenants in common, under Sec. 25, state the fact, and the undivided interest of each.

II.

Said petitioner, D. B., is the owner in fee simple of the following described land in the State of California, County of....., Towit: Lot No. ....., on a plat of subdivision recorded in Book....., Page....., in the office of the Recorder of.....County. (*If any official map is on file in the Recorder's office it may be referred to. In case there is no plat or map on file to be referred to, describe the property, and if a survey has been made, after giving a full description of the land, say:* A plat of survey of said land made by.....is filed herewith marked Exhibit.....

III.

Applicant obtained title to said land by deed dated....., recorded.....;[27] An abstract of title[28] to the land is filed herewith, marked Exhibit.....

IV.[29]

Applicant D. B. further avers that he has (*or,* that he and his predecessors in interest have)[30] been in the actual, exclusive and adverse possession of the land continuously, for more than five years next preceding the filing of this petition, as the owner, (*or,* owners), in fee simple, claiming to own the same as against the world. The possession of the said D. B. has been through tenants and representatives, of petitioner, claiming no other interest in the land adverse to the petitioner. (*Or, state any character of possession.*)[31] And that he has (*or,* he and his predecessors in interest have) paid all taxes, of every kind, legally levied or assessed against such property, during such period.

---

[27]If the land has been derived through a tax sale, made before 1895, as provided for in Sec. 8, set forth the time and place of sale and the deed obtained under the sale. Then also adverse possession and payment of taxes for five years must be averred as in Item IV of this petition. If the tax deed was obtained from the State, an averment of that fact should be made. See Sec. 8 and comments under.

[28]When the title has been previously insured by a corporation, duly qualified, set forth the fact and the date, and file the policy as an exhibit. So also when the title to the, or any of the land has been previously determined by a final decree of a court of competent jurisdiction, set forth the fact here and file a certified copy of the decree or produce the judgment roll (See note to Sec. 6, (d) as an exhibit. In such cases the abstract may be a limited one as provided by Sec. 6.

If title is based on adverse possession as in IV. of this petition no abstract is required.

[29]See Sec. 6, (c), and notes. Omit this item when the application is not based on adverse possession and payment of taxes for five years.

[30]Where the adverse possession has been in part by the predecessors the petition should set out the particulars, giving the names of the former owners, and the periods of their possession. As to making proof, see note to Sec. 6, (c).

[31]See note to Sec. 6, (c), as to possession required.

V.

The land and permanent improvements were assessed on the last assessment for county taxation at $.....

VI.

The land is the separate property of the said D. B., and is not subject to a homestead claim. (*Or,* is a homestead; *or,* is subject to a homestead claim.)

VII.

The land is now occupied by the applicant[32] as (*state nature of occupancy, sufficiently to show his complete possession and supervision.*)

*Or,* the land is now occupied by O. C., for purposes of (*state fully*); his post office address is..... and the only interest claimed by him in said land is as.....

*Or,* the land is unoccupied at present and consists of (*state its character.*)

VIII.

The land is bounded on the.....side by a public (*or,* private) way, but applicant claims no land within the boundary of said way and does not desire to have the line of way determined by the court.[33]

IX.

The liens and incumbrances on said land are as follows, and their priorites are in the order here set forth:

1. M. H., whose postoffice address is....., holds a mortgage on the land for (*describe*), recorded in Book....., Page.....,records of said.....County.

2. *Etc. Set forth as indicated in Sec. 24.*

X.

The property adjoining the above described land on the north is owned by....., whose residence and postoffice address is ..... The property on the east is owned by, etc.

The applicant is unable, after diligent inquiry to ascertain the ownership of the property adjoining on the west.

**APPLICATION TWO**

The petitioner A. M. is a minor of the age of.....years; his occupation is....., and his residence and postoffice address is.....(*make statement as to marriage, as in application one.*

This application is made on behalf of said A. M. by L. G., his

[32]As to these allegations and proof of them, see notes to Sec. 5.

[33]See Sec. 6. If claim is made, and applicant desires the court to determine the line of way, make petition accordingly and the court may order a survey to be made as in Entry No. 5, *POST.*

legally appointed guardian, whose occupation is....., and his residence and postoffice address is.....

*Continue with other items as in Application One.*

**APPLICATION THREE**

The petitioner, A. E., is administrator (*or,* executor) of the estate of A. B., deceased, duly appointed thereto (*state when and where.*) His occupation is.....,and his residence and postoffice address..... As such administrator the said A. E. makes application to have the title of the land hereinafter described confirmed to the estate of the said A. B. or to such distributees of such estate as shall be found to be the owners thereof in fee.

The full name of the deceased was.....; his occupation was....., and his last place of residence was ..... He was married to (*make statement as to whether his wife is living and any facts bearing on the title, including date of his death.*

II.

The said A. B. was in his life time the owner in fee simple of

*Continue as in Application One.*

**APPLICATION FOUR**

The petitioners W. C. and M. C. are husband and wife. Their residence and postoffice address is..... The occupation of W. C. is....., and that of M. C. is house wife.

III, IV AND V.

*As in Application One.*

VI.

The land is community property of said petitioners (*state as to homestead.*)

*Continue as in Application One.*

**APPLICATION FIVE**

The petitioner, The C. H. R. Company, is a corporation organized under the laws of the state of....., and incorporated in the City of....., on the.....day of....., 19..... Its principal place of business is at..... The name of its President is....., whose residence and postoffice address is..... Its Secretary is ....., whose residence and postoffice address is .....

This application is made by L. A., who is the duly authorized agent of the said Company. His occupation is....., and his residence and postoffice address is..... He is acting for said Company in this application by authority from

their Board of Directors, given by resolution adopted, etc. (*State particulars.*)

*Continue as in Application One.*

B.

Wherefore the petitoners, named in the foregoing Applications, severally pray the Court that the lands described herein belonging to each respectively, be brought under the operation of the act above named, and for a decree declaring each to be the owner in fee of, and confirming the title of each to their said lands, and ordering the registration thereof as provided by the said act; and for such other relief as shall be according to law and equity.

C. AND C.
Attorneys for Petitioners.

State of California,
County of.....

The Petitioners in the foregoing applications, D. B., L. G., as guardian of A. M., a minor, A. E., as administrator of the estate of A. B., deceased, W. C., M. C., and L. A., as the duly appointed agent of the C. H. R. Company, being each severally first duly sworn upon oath say, each for himself or herself, that he or she has read the foregoing petition so far as it relates to his or her claims, allegations and land, and knows the contents thereof, and that the same is in such respects true of his or her own knowledge, except as to the matters therein stated on information or belief, and that as to those matters he or she believes it to be true.

D. B.
L. G.
Guardian of A. M., a Minor.
A. E.
Administrator of the Estate of A. B., Deceased.
W. C.
M. C.
L. A.
Agent of the C. H. R. Company.

Subscribed and sworn to before me, ....., a Notary Public in and for said County and State, this..... day of....., 19.....

.....
Notary Public.

**ASSENTS**

We, the undersigned, claiming an interest[34] in the land described in Application....., in the foregoing petition, hereby give our assent to the registration of the same as prayed for in said petition.

.....

.....

[34]Assents to registration by persons having or claiming an interest

State of California,
County of..... } ss.

On this.....day of....., 19....., before me, ....., a Notary Public, in and for said County, personally appeared....., and....., and ....., known to me to be the persons whose names are subscribed to the foregoing instrument of assent and acknowledged that they executed the same.

Witness my hand and official seal.

.....

Notary Public, in and for said County and State.

(SEAL.)

[35]We, owners of lands adjoining the land included in Application....., in the foregoing petition for registration, hereby assent to the hearing of the petition and the registration of the land as prayed for therein.

.....

.....

PLAT—SURVEY—ABSTRACT—ADVERSE POSSESSION.

Sec. 6. If said land is part of a city, town or subdivision of which a map or plat made and verified as required by the then existing laws of the State of California or an official map is on file in the office of the county recorder and upon such map the land appears in such manner that it can be identified thereon by reference, the application may refer to such map[36] In all cases where said land can not be identified by reference to such map or where no such map is on file in the office of the county recorder, a plat or plan of survey of the land made by the county or a licensed surveyor must accompany the application. Such

in the land must be acknowledged and filed with the clerk, Sec. 12. They may be attached to the petition or filed separately. When filed separately see Form No. 20, Sec. 12.

If a defendant to an application to register title, attaches his consent to the entry of the decree, to the application itself, it is sufficient, and it is not material whether the statute expressly provides that the consent shall be evidenced in that manner. Mooney vs. Valentynovics, 262 Ill. 355.

As a matter of practice, to save time and expense, it is better to obtain all assents possible.

[35]The owners of adjoining lands may give their assent in writing, without an acknowledgment. Sec. 12.

[36]Registration was barred in a case where the land was referred to by subdivision and the number of the lot, but where the subdivision was not referred to properly, as of record, nor a plat of the same filed in the proceedings, on the ground that the description was not sufficiently definite to identify the land. Glos vs. Bragdon, 229 Ill. 223.

Applicant must show title in himself, and it is therefore essential that the conveyance under which he claims should identify the premises so that they could be as ascertained by the description. Same case.

survey must show the boundaries of the land and its relation to adjoining lands and streets and any encroachment if any.

(*a*) The court may, in any case, before decree, require a survey to be made for the purpose of determining exact boundaries. [4.]

(*b*) If the application describes the land as bounded by a public or private way, it shall state whether or not the applicant claims any and what land within the limits of the way and whether the applicant desires to have the line of the way determined.[37] [5.]

(c) If it appears by the petition that the applicant, either by himself or by himself and his predecessors in interest, has been in the actual, exclusive and adverse possession[38] of the or any part of the land described, continuously for more than five years next preceding the filing of the petition claiming to own the same in fee against the world, and that he has or that he and his prede-

---

[37]In a case where the land of S. and other land bounded on a private way, and the line of the way was determined in registration proceedings, but was wrongly located, HELD, That the decision in S.'s case applied only to S's lots and the part of the way on which they bounded, and that there was nothing in the circumstances to prevent the owner of another lot insisting upon having the way properly located where it bounded on his land. Pollard vs. Burchard, 119 Mass. 376.

In the case of First National Bank vs. City of Woburn, 192 Mass. 220, the question which arose in the Land Court was, whether the petitioner's title was good up to the line of the street as originally laid out or whether the public had acquired a way by prescription over a strip of land about two and a half feet wide, lying between the easterly side of Main street as laid out and the base line of the bank building standing on petitioner's lot. The court said:

"A fundamental inquiry is, whether the Land Court, in a proceeding of this kind (for registration of the title) has a right to determine such a question. We have no doubt it has this right. An application for the registration of a title is by the terms of the statute a proceeding *in rem*, which operates directly to vest and establish title to the land.

[38]A person asking registration on the ground of adverse possession who had possession of inclosed property under claim and color of title for seven years (only five years are required in California) and had paid all taxes legally assessed during that time, is entitled to have his title registered. Tobias vs. Kaspzuk, 247 Ill. 80. Glos vs. Mickow, 211 Ill. 117.

On Nov. 7, 1906, John N. Woods filed an application to register his title to a lot in Norwood Park, alleging that the lot was vacant and unoccupied, and that Jacob Glos and others claimed some interest therein by reason of tax deeds and other conveyances of the lot to them, . . . . Thereafter Jacob Glos took possession of the lot on July 12, 1906.

Jacob Glos had color of title, acquired in good faith, under two tax deeds, and had paid all taxes and special assessments legally levied against the lot, for the seven successive years from 1897 to 1903, inclusive, but had not taken possession of the lot, when the application was filed and it was then vacant and unoccupied. Section seven of the act in regard to limitation under which Glos claims, provides, in order that the bar of the statute may become complete there should

cessors in interest have paid all taxes of every kind legally levied or assessed against such property during said period,[39] the petition must then also state the character of such possession[40] and the

be a concurrence of claim and color of title acquired in good faith, payment of taxes and actual taking possession of the premises.

Held, that Glos could not perfect his claim after the application for registration had been filed. Woods vs. Glos, 257 Ill. 125.

Possession of land is not shown by proof of the recording of the deed, and making of entries in books with reference to the property. Glos vs. Wheeler, 229 Ill. 272.

Mere record of title of marsh and beach land, not running back to the original grant or patent, raises no presumption of possession, but possession must be established by oral proof. Crabbe vs. Hardy, 135 N. Y. S. 119.

[39]**Payment of Taxes—Color of Title.**

Where applicant produces receipts showing payment of general taxes for a series of years, the presumption will be indulged that these are all the general and special taxes and special assessments levied and assessed against the property. It is incumbent on the defendant to show that there were other taxes or special assessments. Glos vs. Mickow, 211 Ill. 117.

In proving title by seven years possession (in California, five) coupled with the payment of taxes, any question as to the sufficiency of the proof of the payment of taxes must be raised by objections before the examiner of titles. It can not be raised for the first time in a court of review. Gage vs. Consumers E. L. Co., 194 Ill. 30.

Possession for sixteen years without proof of payment of taxes for at least seven consecutive years during the time petitioner was in possession under the deed, did not establish title in the petitioner by limitation or otherwise, as against the world. Glos vs. Holberg, 220 Ill. 167.

Payment of taxes under color of title, may be shown by any competent evidence, including testimony of a person having knowledge of the payment; and such payment is established by tax receipts and the testimony of the holder of color of title that he paid the taxes each year, even though his initials do not correspond with those given in several of the tax receipts introduced in evidence.

The mere introduction of a tax deed in evidence without proof as to what amount, if any, they had paid on account of taxes, is not sufficient evidence to base a decree of re-imbursement upon and there was no error in ordering Title registered without any terms on the applicant. Tobias vs. Kaspzyk, 247 Ill., 80.

The proof must show color of title, payment of taxes, etc. Glos vs. Wheeler, 229 Ill., 272.

A partition decree which confirms report of commissioners and purports to vest the title to the same extent as would a deed, though it may be erroneous, is color of title. Peters vs. Discus, 254 Ill., 379.

[40]**Establishing Title by Adverse Possession**

Neither the act of New York nor Illinois contains this clause as to finding adverse possession. But in Illinois decisions it is recognized that there are several ways of proving legal title for the purpose of registration besides patent title from the United States government, proven by original deeds and muniments of title. Among others is noted seven years possession and payment of taxes under claim and color of title, under section six of the limitation act. This corresponds to the California title by prescription. Any absolute title in fee may be registered however acquired. In California one method of conferring title is by occupancy (Sec. 1007, Civil Code) for the period prescribed

applicant must prove the same to the satisfaction of the court on the hearing.[41]

by the Code of Civil Procedure as sufficient to bar an action for the recovery of the property. This period is by Sec. 322, et seq., of C. C. P. five years of adverse possession with the payment of taxes.

The Torrens act makes no change in this respect. In the foregoing section it is provided that when the applicant bases his title on adverse possession and payment of taxes "the petition must then also state the character of such possession and the applicant must prove the same to the satisfaction of the court." But it is nowhere said in the act, that when he has done this he is entitled to registration. All that he accomplishes by these allegations and proofs is to bring himself under the general statute by "stating the character of his possession" and making it appear that it comes under some one of the cases defined as constituting adverse possession, by the code of civil procedure. If he does this he has a good title, and as owner of the land is entitled to registration.

We must therefore refer to the general statutes to determine the character of possession required for registration, under this provision.

The Code of Civil Procedure in prescribing the occupancy sufficient to bar an action for the recovery of property, defines adverse possession as follows:

Sec. 322. When it appears that the occupant, or those under whom he claims entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupancy and possession of the property, under such claim for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

Sec. 323. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved.
2. Where it has been protected by a substantial inclosure.
3. Where, although not inclosed, it has been used for the supply of fuel, or for fencing timber for the purpose of husbandry, or for pasturage, or for the ordinary use of the occupant.
4. Where a known farm or single lot has been partly improved, the part of said farm or lot that has been left not cleared, or not inclosed, according to the usual course or custom of the adjoining country, shall have been deemed to have been occupied for the same length of time as the part improved or cultivated.

Sec. 324. Where there has been an actual, continuous occupancy of the land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

Sec. 325. For the purpose of constituting adverse possession by any person claiming a title not founded upon a written instrument or a judgment or decree, land is deemed to have been possessed and occupied in the following cases, to-wit:

1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provisions of any section of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party, persons, their

(*d*) Each application must be accompanied by an abstract of title to all land which does not appear by said petition to have been adversely held as hereinabove provided. When the title to the or any of the land described has been previously determined by a final decree of a court of competent jurisdiction[42] no abstract regarding the same need antedate such decree.

(*e*) When the title to the or any of the land described has been previously insured by a corporation transacting business in insuring titles to real estate and a policy of insurance has been issued by said corporation[43] and at the time of the issuance of said policy, said company had fully complied with all laws of the State of California, such policy may be made the starting point of any abstract to be filed under the provisions of this act and the abstract of title so to be presented need only commence at the date of such title insurance policy and the verification thereof hereinafter provided need only apply to the portion of said abstract subsequent to the date of said title insurance policy, but must include all defects or exceptions stated in said policy.

(*f*) All abstracts herein referred to must be verified by the searcher making the same, as in proceedings in partition,[44] or if

---

predecessors or grantors, have paid all the taxes, State, County, or municipal, which have been levied or assessed upon such land.

Sec. 1007, Civil Code of California, provides:

Occupancy for the period prescribed by the code of Civil Procedure, as sufficient to bar an action for the recovery of the property confers a title thereto, denominated a title by prescription, which is sufficient against all.

[41]**Making Proof**

As adverse possession may be by an owner and his predecessors the practical question will be to make proof. It would appear that presentation of the deeds or certified copies, as evidence, would be required, but that this alone would not be sufficient, as it is the adverse possession that is essential. It was said in the case of Gloss vs. Wheeler, 229 Ill. 272, that possession of land is not shown by proof of the recording of the deed, and making of entries in books with reference to the property. And held in the case of Crabbe vs. Hardy, 135 N. Y. S. 119, that mere record of title of marsh and beach land, not running back to the original grant, raises no presumption of possession, but possession must be established by oral proof. It is probable that such proof will be required here. This matter of possession will be a fit subject for investigation by the examiner of titles, or the referee, to whom the case is sent.

[42]In this case a certified copy of the decree should be filed as an exhibit; or perhaps the judgment roll will be required as held in the case of Harper, admr. vs. Rowe, 53 Cal. 233, where it was said:

If a party attempts to avail himself of a decree as an adjudication upon the subject matter as a link in his chain of title founded on a judicial sale, he must produce the judgment roll so that the court may determine, on an inspection of the entire roll whether the court which rendered the decree had jurisdiction of the subject matter.

[43]The policy of insurance should in such case be filed as an exhibit.

[44]By Sec. 800, Code of Civil Procedure, an abstract in partition proceedings must be verified by the affidavit of the person making it to the effect that he believes it to be correct.

made by a corporation, by the certificate of such corporation, under its seal.

(*g*) Where actual, exclusive and adverse possession and payment of taxes is alleged but not proved to the satisfaction of the court on the hearing, the court may require an abstract of the title as herein provided to be furnished which shall then be used in the same manner as if such abstract had been filed with the application. [6.]

(*h*) No person, nor any corporation which, at the time has not fully complied with the provisions of the laws of the State of California, shall be authorized to make or furnish such abstracts of title until after entering into an undertaking with two or more sufficient sureties to the people of the State of California in a sum not less than $10,000.00, which may be increased from time to time by order of the court [8.] whenever it shall appear to such court that by reason of the number of abstracts of title which any one person or corporation is making or furnishing under one bond, the state is not sufficiently secured thereby.

(*i*) Such bond shall be recorded in the record of official bonds in the recorder's office of the county. Said bond shall be conditioned to pay all damages and costs which the State may sustain by reason of any error or insufficinecy in said or any of said abstracts. The sureties on such bond shall qualify as provided in section ten hundred and fifty-seven of the Code of Civil Procedure[45] and the sufficiency of the bond and of the sureties thereon shall be approved by a judge of the Superior Court of the county where such bond is to be filed. [7.] The sureties upon such bond may become severally liable in portions of not less than five hundred dollars each, making in the aggregate at least two sureties for the whole sum.

(*j*) Upon any petition hereunder being filed, the clerk shall immediately endorse thereon the exact time of its presentation and shall enter the same in a book kept for that purpose known as the land register docket.

4. (Sec. 6.) *Order for survey.*
[*Title.*]

It appearing to the court that the petition in this case was not accompanied by a survey of the land sought to be registered, and

[45]Sec. 1057, Code of Civil Procedure: The officer taking the same must require the sureties to accompany it with an affidavit that they are each residents and householders, or free-holders, within the State, and are each worth the sum specified in the undertaking or bond, over and above all their just debts, or liabilities, exclusive of property exempt from execution; but when the amount specified in the undertaking or bond exceeds $3000.00 and there are more than two sureties thereon, they may state in their affidavits that they are severally worth amounts less than the amount specified in the undertaking or bond, if the whole amount is equivalent to that of the two sufficient sureties.

that such survey is necessary for the proper consideration of the application for registration, it is hereby ordered that the applicant have a survey made by the County surveyor, (*or,* by C. S. I., a regularly licensed surveyor), to determine the exact boundaries of the land, and which survey shall show its relation to adjoining lands and streets and any other natural conditions, and shall show any encroachments that may exist on said land.

5. (Sec. 6.) *Order for survey to determine line of public way.*

[*Title.*]

The applicant herein having in his petition asked that the line of the public way which bounds his land on the.....be determined, (*or, give any other cause for the order*), it is for good cause hereby ordered that a survey be made by the County or a licensed surveyor, to determine the line of way and the exact boundaries of said land.

6. (Sec. 6.) *Order that abstract be furnished when title by adverse possession not proven.*

[*Title.*]

It appearing to the court that the petition in this case alleges the actual, exclusive and adverse possession, with the payment of all taxes, for more than five years next preceding the filing of said petition as a basis for the registration of the land described in the petition, and it appearing that the proof offered by the applicant is not sufficient in the estimation of the court, to establish the facts alleged with the certainty required for registration, it is therefore ordered that the applicant be permitted to furnish the court with an abstract of title to said lands, to be made in the manner and by such person or corporation as authorized by the act for the registration of titles, to be used as in other cases in proving his title; and..... days are allowed therefor, and on failure so to do that this application for registration stand dismissed at the cost of the applicant.

7. (Sec. 6.) *Bond of person making abstracts approved.*

This day came.....and presented a bond in the sum of.....dollars (*not less than* $10,000.00) conditioned to pay all damages and costs which the State may sustain by reason of any error or insufficiency in any abstract of title which the said.....may make and furnish, of lands sought to be registered under the laws of the State; and said undertaking being conditioned according to law, and the sufficiency of said bond and of the sureties thereon having been approved and the approval endorsed thereon by the Hon. L. R. W., judge of the Superior Court, it is ordered that it be received and filed in the office of the recorder of this County.

8. (Sec. 6.) *Order for increase in amount of bond.*

It appearing to the court that the undertaking heretofore furnished by.....as examiner of titles, furnishing abstracts under the act for registration of titles, in the sum of $....., has become insufficient, by reason of the number of such abstracts being furnished by him, and that the State is not sufficinetly secured thereby, it is now ordered that the amount of his bond be increased to.....dollars; and that an additional, or a new undertaking be furnished, in accordance with this finding, and to the approval of a (*or,* the) judge of this court.

Sec. 7. FEE TO BE FIRST REGISTERED:—No mortgage, lien, charge, or lesser estate than a fee simple shall be registered unless the fee simple to the same land is first registered.

(*a*) It shall not be an objection to bringing land under this act, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien, or charge; but every such lesser estate, mortgage, lien, or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens, and charges as are so noted, except as herein provided.

Sec. 8. FIRST REGISTRATION OF A TAX TITLE:—No title derived through sale for any tax or assessment shall be entitled to be first registered, unless it shall appear to the satisfaction of the court upon the hearing of the application that the applicant or those through whom he claims title, have been in the actual, exclusive and adverse possession of the land under such title at least five successive years and have paid all taxes and assessments legally levied thereon during said period. But the foregoing shall not apply to any title derived through sale by the State of California of any property which has been sold by the state for taxes and held by the state for the period provided by law.

The foregoing section refers to tax titles derived through two sources:

1st. Those through direct purchase at a tax sale.

2nd. Those through purchase from the State of California, which the state had previously obtained through a tax sale.

In regard to the first: The present general law was passed in 1895, and provides by Secs. 3767 and 3771, Political Code, that all delinquent land shall be declared sold to the State of California. Consequently all titles of this first kind must date back of 1895, and they must, under this section, be held adversely, with payment of taxes, for five years previous to application for registration.

In regard to the second kind: The foregoing section requiring five years of adverse possession, etc., does not apply to a tax

title derived through a sale by the state, provided the state has held it for the period provided by law. This period refers to the time during which the property may be redeemed, which by Sec. 3780, P. C., is five years after the date of the sale to the state. Until that five years has expired the state has only an equitable title[43]and can not receive a deed for the land,consequently can not give a deed to an individual purchaser. Then the five years' time for redemption having expired, and the title of the state having become absolute (Sec. 3788, P. C.), and it having received a deed for the land (Sec. 3785, P. C.), and the Controller of the State having sold the land as provided in Sec. 3897, an absolute title is conferred on the purchaser.[43] This general law governing tax sales is in no way changed by the Torrens act. All the Torrens act does is to say that this tax purchaser from the state may register his title without a previous five years possession. Thus putting him on the same plane as any other owner of absolute title. But could he make the necessary averments to enable him to register under the claim of title by adverse possession? *Quere.*

The foregoing provision does not appear to cut off any of the rights of the original owner in favor of the "Tax Shark" as asserted by some of the opponents of the law.

Sec. 9. AMENDMENT OF APPLICATION:—The application may be amended[44] only by petition verified as in the case of the original Such amendment may be ordered by the court on its own motion [9] or upon the motion of any person interested in the proceedings. [10.]

9. (Sec. 9) *Order for amended petition.*
[*Title.*]

On consideration of the petition herein (and in accordance with the recommendation of the Examiner of Ttitles) the court finds that the statement of facts therein does not fully comply with the requirements of the act for registration of the title (*or state other reason*), and it is therefore ordered that the applicant be allowed to file an amended petition within.....days.

10. (Sec. 9.) *Same, on motion of applicant*
[*Title.*]

On motion of the applicant herein, he is allowed to file an amended petition in this case, within.....days.

[43]See Santa Barbara vs. S. and L. Soc., 137 Cal. 463.

[44]A defendant can not complain of an amendment of the application in a manner which does not affect his interest. Glos vs. Murphy, 225 Ill. 58.

Where the application is amended it is not erroneous to refuse leave to defendant to file a new answer to the same, unless it appears that the amendment is material as respects the interest of such defendant and that a new answer by him is necessary. Same.

As to service of notice after amendment, see note to Sec. 12.

Sec. 10. LIS PENDENS:—The filing of the application in the office of the county clerk shall be sufficient notice of the same to all subsequent purchasers or incumbrancers without the filing of a lis pendens in the office of the recorder.

EXAMINATION OF ABSTRACTS—PETITION.

Sec. 11. ORDER FOR NOTICE OF FILING PETITION:—The court shall, in its discretion, where one or more abstracts are presented with the petition, examine them itself or refer the same as provided in Sec. 18 of this act; (*a*) if it shall appear to the court from an examination of the abstract or abstracts or from the report of the examiner of titles or from the petition where no abstracts are required, that the title to the land described in the application appears to be substantially as alleged[45] the court shall order notice to be given as provided in this act. [11, 12, 13, 14.]

---

[45]The New York act requires that the title should appear to be in the applicant "beyond a reasonable doubt," and the court has held:

Where, in an action for registration of title to real property, no persons were originally named as defendants, except "The People of the State, and all other persons, if any, who have any right, or interest in, or lien upon, the property affected by this action, or any part thereof," but subsequently other parties were made defendants, who, answering, put in issue the material allegations of the complaint, and specifically pointed out various defects in the title sought to be registered, and it appearing from the official examiner's certificate that certain portions of the property were in persons not specifically named as defendants, and there were no facts stated justifying such omission, the court had no jurisdiction to direct the commencement of the action to register such title, or to authorize the issuing of the summons. The City and Sub. House Co. vs. People, 157 N. Y. 459.

At the commencement of an action for the registration of title to real property the court is not justified in relying upon the conclusions of the official examiner, but is bound to carefully and critically examine the certificate, the abstract, and the accompanying affidavits, and to see that, assuming all of the facts therein stated (as distinguished from mere conclusions, references or opinions) to be true, not only does the applicant appear to have a title free from reasonable doubt, but that every person who might have any right therein, or lien thereon, is specifically named as a party defendant, if such name is known or can be ascertained. Unless this is done the court has no jurisdiction to direct that such action shall be commenced, or to authorize the issuing or service of a summons therein. Partenfelder vs. People, 157 N. Y. 462.

The complaint in registration proceedings and all other papers filed must show that the plaintiff appears to have a title that should be registered, and no registration can be made unless the court is satisfied that the title is free from reasonable doubt.

The court can not grant registration of title without proof that the title is one of the character specified in the statute and is free from reasonable doubt. And an allegation as to the nature and character of the applicant's title is essential, for what must be proved must be alleged. Lachman vs. People, 127 N. Y. S. 910.

A statement of a legal conclusion by the examiner giving a certificate of title, can not be accepted by the court, in an application for an order directing an action to register title, unless the facts are before the court by abstract or statement. Lachman vs. People, 127 N. Y. S. 912.

11. (Sec. 11.) *Order that notice of filing of petition be given.* [*Title.*]

The court having duly considered the petition in this case (and the abstract of title furnished herein and the report of J. M., the examiner of titles to whom the abstract was heretofore referred) † and it appearing to the court* that the title to the land in said petition described is substantially as alleged therein, it is now ordered that notice of the filing of said petition be given, as provided in the act for registration of titles, directed to all persons named in said petition as having an interest in the land, and also to the following named, who appear from the abstract of title,[46] (*or*, the report of the examiner of titles),[47] to have an interest in the land, viz: J. R. and L. B.; and to all persons known and unknown[48] who have or claim to have an interest in, or lien upon said land, and to all whom it may concern.

And it appearing that the land is bounded by a public way, and that the petitioner prays to have the line thereof determined,[49] it is ordered that notice be given to the mayor (*or other presiding officer*) of.....in which such way is situated, (*or if outside of an incorporated city or town,* to the presiding officer of the board of supervisors.[49]

The notice attached hereto is approved.[50]. And it is ordered that said notice be published in the....., a newspaper of general circulation, published in this county,[46] once a week for four successive weeks, and service made as provided by the act aforesaid.

12. (Sec. 11.) *Report of examiner approved by the court, at this time, and notice ordered, use Entry No.* [*Title.*]

*If the report of the examiner is approved by the court, at this time, and notice ordered, use Entry No. 29, Sec. 19.*

---

[46]By Sec. 12.

[47]Sec. 19 of the Minnesota act provides "That all persons named in the application, or found by the report of the examiner, as having any lien, incumbrance, right, title or interest in the land shall be known as defendants," and it was held by the court that the provision that the summons shall be issued by order of the Court, and attested by the Clerk, does not require that the defendant, to be mentioned in the summons, shall be named in the order. Dewey vs. Kimball, 89 Minn. 454.

[48]By Sec. 16 the decree ordering registration is conclusive against all persons, known and unknown, and therefore the notice of the filing of the petition should embrace all.

[49]By Sec. 13. Also if the land borders on a navigable stream or an arm of the sea, notice must be given to the Attorney General of the State.

[50]See form of notice, 15, Sec. 12. This clause may be omitted here and the notice prepared in accordance with the order.

13. *Order refusing notice and dismissing petition.*
[*Title.*]

*As in Entry No. 11 to * and continue*)—that the title to the land described in the petition is not so vested in said applicant as to authorize the registration thereof in him, his application is therefore dismissed at his cost.

14. *Order refusing notice and dismissing application, on report of Examiner of Titles.*[51]

*As in Entry No. 11 to † and continue*)—and the said J. M. having certified his opinion that the title of the land is not so vested in the applicant as to authorize its registration in him, the said report is hereby approved and confirmed as the finding of the court, and the application for registration of such title is dismissed.

And a fee of $..... to said examiner is allowed as a part of the costs in this case, which costs the applicant is ordered to pay.

Sec. 12. NOTICE AND SERVICE THEREOF:—When the court shall order notice given, a notice [15.] must be issued, under the seal of the court, which shall contain the name of the court and the county in which the action is brought, the name or names of the applicant or applicants and a particular description of the land involved, which notice shall be directed to all parties appearing by the petition or the petition and abstract, or by the report of the examiner of titles, if any, to have any interest in the land or any part thereof, (*a*) and which notice shall contain a statement that the petition has been filed by the applicant or applicants for the registration of the title to the land described therein as provided by this act (*b*) and praying for a decree declaring the applicant or applicants to be the owner in fee of such land in accordance with the prayer of said petition (*c*) and which notice shall direct all whom it may concern to appear and answer said petition within ten days after personal service if served within the county, or within thirty days if served elsewhere, and that otherwise the court will grant said petition and direct registration of the title to said land in accordance with the terms of this act and that said person so served will be forever barred from disputing the same.

(*d*) When the notice is issued, service thereof shall be made as follows: In all cases said notice shall be published in a newspaper of general circulation published in the county, to be designated by the court for four successive weeks; if the notice be published in a daily newspaper, publication therein once a week for four successive weeks shall be sufficient.[52] [16.]

[51]Where the proof does not authorize the registry of the title, the application should be dismissed. Glos vs. Cessna, 207 Ill. 69. Glos vs. Holberg, 220 Ill. 167.

[52]Failure to republish the notice after amendment of the description

(*e*) All parties who have not joined in the petition or assented thereto in writing and who appear by the petition or petition and abstract or report of the examiner of titles to be interested in the fee, all occupants named in the petition and the husband and wife of the applicant, if married, shall be personally served [17.] with a copy of the notice, attached to a copy of the petition if they reside in the state and can, with reasonable diligence, be found and served therein. (*f*) All owners of adjoining lands who have not given their written consent to the hearing of the petition and who reside in the state and can, with reasonable diligence, be found and served therein, shall be served with a copy of said notice, without a copy of said petition, personally.

(*g*) As to all persons who have not joined in the petition or who have not in writing assented to the hearing thereof, who do not reside in the state or who can not, with reasonable diligence, be found and served therein, a copy of such notice, without a copy of the petition, shall, within thirty days after the first publication of such notice, be sent to such party at his last known place of residence, by mail, postage prepaid [18.], and if his last known place of residence can not with reasonable diligence be ascertained, then such notice must be mailed to him in care of the county clerk of the county in which the land is situated; (*h*) provided, however, that as to all such persons so to be served by mail who appear by the petition or petition and abstract or report of the examiner of titles to be interested in the fee, a copy of the petition shall be attached to the copy of the notice mailed to them as herein provided, (*i*) provided, further, that no copy of abstract, order or map need be served with any notice.

(*j*) All persons who claim an interest may appear[53] and object to the granting of the application [19.] and if such objection is sustained, the costs of the same shall be paid by the applicant; if not, by the person so objecting.

---

of the lots, as given in the application, is not fatal, where all the parties who had, or claimed, to have any interest in the lots were personally served by summons or entered their appearance. Tower vs. Glos, 256 Ill. 121.

Registration not barred by failure to properly serve by publication, defendants who had no interest, or were only nominal defendants.

Where a party to the suit releases or quit claims his interest pending the suit and prior to the entry of a decree therein, the question whether jurisdiction has been properly acquired over his person becomes of no importance. O'Laughlan vs. Covell, 222 Ill. 162.

[53]IT SEEMS, that when a person who has a right to appear in such action (for registration of title) has not been named as a defendant by the plaintiff, the orderly proceeding is for him to enter his appearance, demand a copy of the complaint, and to answer it within the time allowed.

The action is in rem, and the judgment entered therein is conclusive upon all the world. As the statute gives to every person whose interests may be affected by the judgment the right to appear, such person

(*k*) The time for appearance shall be ten days after personal service within the county; thirty days after personal service out of the county and in the state; all persons not required by this section to be served personally shall have sixty days after the first publication of such notice within which to appear.

(*l*) All persons having or claiming any interest in the land or any part thereof may assent in writing [20.] to the registration thereof, and the person thus assenting need not be named as a defendant in the registration proceeding, or, if already named as a defendant, need not be served with notice therein. Such assent shall be executed and acknowledged in the manner now required by law for the execution and acknowledgment of a deed and shall be filed with the clerk of the court.[54]

15. (Sec. 12.) *Notice of filing of petition.*

In the Superior Court of the State of California, in and for the County of.....

[*Title.*]

(*Naming all the applicants and defendants.*)

The State of California to the above named defendants, and to all persons, known and unknown, who have or claim any interest in, or lien upon any part of the land described herein, and to all whom it may concern—Greeting:

You and each of you are hereby notified that the above named petitioners did on the.....day of....., 19....., file in the office of the County Clerk of said county their verified petition for the registration of the title to the lands described therein, and hereinafter, as provided by the act therefor, enacted by the people of the State of California at the general election held November 3, 1914, and praying for a decree declaring the applicants to be the owners in fee of such lands described as

need not apply to the court for leave to appear, nor can that right be determined by the plaintiff. Sunderman vs. People, 148 N. Y. 124.

An abutting owner has an absolute right to appear and answer the complaint. Ib.

Where an abutting property owner held an easement in the property sought to be registered, to the extent of a right to support a party wall, and was not made a party to the registration proceedings, he was entitled to appear in the action and assert his easement. Hawes vs. U. S. Trans. Co., 127 N. Y. S. 632.

[54]A defendant to an application for registration of title may consent in writing, to the entry of a decree of registration and in such case it is not necessary to have summons issued against him or that he have any opportunity to be heard, nor will he be permitted to appeal from such decree or assign error upon it.

If he attaches his consent to the decree, to the application itself, it is sufficient, and it is not material whether the statute expressly provides that the consent shall be evidenced in that manner. Mooney vs. Valentynnovics, 262 Ill. 355.

belonging to each of them respectively, in accordance with the prayer of said petition.

ONE: The land claimed as belonging to the petitioner D. B. is described as follows: (*Describe as in the petition.*)

TWO: The land claimed as belonging to the petitioner A. M. is described as follows, etc.

You are hereby directed to appear and answer said petition within ten days after personal service of this notice upon you, if served within this county, or thirty days after personal service out of the county and within the State, or within sixty days after the first publication of this notice, if it has not been personally served upon you in this State. And if you fail to so appear and answer and show cause why said petition should not be granted the court will grant said petition and direct registration of such land in accordance with the terms of said act, and you will be forever barred from disputing the same.

Witness the Hon. ....., Judge.

Given under my hand and the seal of said court, this..... day of....., 19.....

[SEAL.]

H. J. L.,
County Clerk.[55]

C. and C., Attorneys for Applicant.
First publication....., 19.....

16. (Sec. 12.) *Publication of notice approved.*[56]
(*Title.*)

Affidavit of publication having been filed in this case showing that notice of the filing of the petition for registration was duly published for four successive weeks, on and after the..... day of....., 19....., in the..... a newspaper of general circulation published in this county, and the court finding such publication and the evidence thereof in all respects regular and according to law and the former order of this court, does hereby approve the same.

By Sec. 1707, C. C. P., a citation must be served in the same manner as a summons in a civil action, and by Sec. 410, C. C. P., summons may be served by the sheriff or by any person over eighteen years of age, not a party to the action. By Sec. 415

[55]Citations must be issued by the clerk, under the seal of the court. Sec. 1707, Code of Civil Procedure.

[56]Sec. 2010, Code of Civil Procedure, provides that evidence of the publication of a document or notice to be published in a newspaper may be given by the affidavit of the publisher of the newspapers, or his foreman, or principal clerk, annexed to a copy of the document or notice specifying the times when, and the paper in which the publication was made, but in all cases it is better to have an order of the court approving the publication.

proof of service by a person other than the sheriff must be made by his affidavit.

17. *Affidavit of service of notice by other than sheriff.*

State of California, } ss.
County of..... }

J. D., being duly sworn, deposes and says, that he was at the time of service of the papers herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within named action;* that he personally served the within notice on the hereinafter named defendants, by delivering to and leaving with each of said defendants personally, in the county of ....., State of California, at the times set opposite their respective names, a copy of said notice (attached to a copy of the petition referred to in said notice).

Names of defendants served — Time of service.

.....

Fees for service, $..... Mileage, $..... Total, $.....

(*Subscribed and sworn to.*)

18. *Affidavit of service by mail, by other than sheriff.*

*Same as in above to * and continue):* that he deposited a copy of the within notice in the United States postoffice at..... .....in a sealed envelope, postage prepaid, addressed to each of the defendants hereinafter named at his last known place of residence, on the dates and directed to the city or town set opposite his name:

| Names of persons. | Date of mailing. | City or Town to which sent. |
|---|---|---|
| ..... | ..... | ..... |

(*Subscribed and sworn to.*)

When the place of residence of the defendant can not with reasonable diligence be ascertained, and the notice is mailed in care of the county clerk of the county where the land is situated, make the affidavit accordingly, stating the reason.

19. *Answer, objecting to registration.*

(*Title*)

O. D., one of the parties claiming an interest in the land sought to be registered in this case, now by his counsel, J. E., for answer to the application for registration of the title to said land comes and objects thereto and for cause says: (*State cause of objection.*)

Wherefore said O. D. prays the court that the registration asked for by the applicant be refused and his petition dismissed at cost of the applicant, and for such other relief as shall be according to equity.

(*Verify as in other cases.*)

20. (Sec. 12.) *Assent to registration by person claiming interest.*[57]

In the Superior Court of the State of California, in and for the County of.....

D. B. et al,
*Applicants.*
vs.
C. H. D. and M. A. D.,
*Defendants.*

No.

Petition for Registration of Title to Land.

We, the undersigned, claiming an interest in the land described in the petition for registration of title, filed in the above case, viz.: (*describe the land*) do hereby give our assent to the registration thereof as in said petition prayed for.

.....

.....

State of California,
County of..... } ss.

On this.....day of....., 19....., before me, a Notary Public, in and for said County and State, personally appeared.....and.....known to me to be the persons whose names are subscribed to the foregoing instrument of assent and acknowledged that they executed the same.

Witness my hand and official seal.

.....

Notary Public in and for said County and State.

[SEAL.]

Sec. 13. GUARDIAN AD LITEM.—PUBLIC WAY, ETC.]—Upon the petition of the applicant or of any person interested in the proceedings, the court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability and for all persons not in being who may appear to have any interest in or lien upon the land. [21.]

(*a*) If the petition prays to have the line of any public way determined, notice shall be given to the mayor or other presiding officer of any incorporated city or town in which such way is situated, or if such way be situated outside of any incorporated city or town, then to the chairman or presiding officer of the board of supervisors of the county in which such way lies, by delivering to such mayor or other presiding officer or to the chairman or presiding officer of such board of supervisors a copy of such notice personally.

(*b*) If the land borders on a navigable stream or on an arm of the sea, or if it otherwise appears from the application or the proceedings that the state may have a claim adverse to that

[57]See also, assent attached to petition.

of the applicant,[58] notice shall be given in the same manner to the attorney general.

(*c*) The court may also cause such other or further notice of the application to be given as it may deem necessary and proper.

21. (Sec. 13.) *Appointment of guardian ad litem.* (*Title.*)

It appearing to the court that.....is a minor (*or under other disability*), and that he has an interest in this proceeding, now on petition of.....the applicant herein, (*or,* who is interested in these proceedings), H. B., a disinterested person, is hereby appointed guardian ad litem for said minor. And now comes the said H. B. and accepts said appointment (and files his answer herein).

Sec. 14. HEARING OF PETITION.]—After the notice required to be given by this act has been given and the time for all persons to appear has expired, the court shall set the petition down for hearing upon notice to all persons who have appeared, as is required in other civil actions, and shall proceed to determine the title to all the land described in the petition and of all persons who may have any interest therein or in any part thereof,[59] and

[58]Under the provision in the Minnesota act, that "when the State has some interest in or claim upon the land it shall be joined as a party in said proceedings," it was held that tax liens held by the State were not interests in, or claims upon the land on which they are a lien, within the meaning of the law. Any other construction would entail much expense on the State. National Bank and Security Company vs. Daskan, 91 Minn. 81.

In 1905 the act as above stated was amended, as follows: "Whenever in the opinion of the examiner, the State has any interest in, or lien upon, the land the State shall be joined as a party . . . . in order that its interest, estate, or lien may be defined and preserved."

Under this wording it was held, that a tax lien held by the State was within the terms of the amended section and the State a necessary party. B. and S. Co. vs. Hopkins, 96 Minn. 119.

[59]The object and purpose of the Torrens act was to provide a speedy and summary method of determining rights and interests in registered property, and to authorize the court in proceedings thereunder to hear and determine all controversies respecting the title, and by proper decree to definitely fix, establish and declare the title, rights and interests of all interested parties. It can determine and decree the existence of a mechanics lien, but not order its foreclosure. Reed vs. Siddall, 94 Minn. 216.

By Secs. 15 and 25 of the Illinois Torrens act, the court is specifically authorized to remove clouds from titles, by decree in registration proceedings. The California act does not contain such specific provision, but the power of the court, as set forth in this section, when called into exercise, would appear to be sufficient for the determining and settling of all questions, and consequently the removal of all clouds. The most common cloud upon titles, as appears from the cases reported in the Supreme Court of Illinois, is that of a tax deed or tax sale, which the applicant seeks to have set aside.

whether or not the, or any part of the, land, the title to which is so determined is the separate or community property of the party found to be the owner,[60] and whether or not the title to the or any part of the land is held in any special capacity and shall make, give and enter a decree,[61] confirming the title of the person found to be the owner whether he be the applicant or any other person who may, in the proceedings, ask to have his title registered and shall order the registration of all such land.[62] [22.]

(*a*) Upon the trial of any issue of fact raised by the verified pleading of any person claiming by such pleading to have an interest in the or any part of the land or appurtenances, such issue shall, upon demand of any party appearing, be submitted to a jury in the same manner and to the same extent as such issue can, under general law and the constitution of the state, be submitted to a jury trial in like matters and, when so submitted, the verdict of the jury shall have the same force and effect as is provided by general law upon the submission of like issues to a jury.

DECREE FOR REGISTRATION.

Sec. 15. Every decree shall state whether or not the owner of the land directed to be registered is married or unmarried and, if married, the full name of the spouse; (*a*) If the owner is under a disability it shall state the nature of the disability and the person acting for him and the source of his authority, and if a minor, it shall state his age and in whose custody his estate then is; (*b*) it shall also contain an accurate description of the land to which the court shall determine title and shall set forth the estate of the owner and also, in such a manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments and other incumbrances, including the rights of husband or wife, if any, to which the land or the owner's estate therein is subject and may contain any other facts properly to be determined by the court.

---

[60]See note to Sec. 5 as to community property.

[61]A decree registering title after a full hearing of the cause, is a final decree, and after the adjournment of the term the court loses jurisdiction of the cause and has no power at a subsequent term to vacate or set aside the decree, except as to matters of form. or for clerical errors of the clerk. Mooney vs. Valentynovicz, 255 Ill. 118.

[62]On application for registration of certain described property, a decree may be entered for the registration of any part thereof, even though it be less in extent than the premises described in the application. Glos. vs. Holberg, 220 Ill. 167. Glos vs. Murphy, 225 Ill. 58.

Where proof does not authorize the registration of the title the application should be dismissed. Glos vs. Cisna, 207 Ill. 69; Glos vs. Holberg, 220 Ill. 167.

(*c*) The decree shall be stated in a form convenient for transcription upon the certificate of title[63] and any lien or other charge against the property, if recorded, shall be referred to by book and page of the record.

(*d*) Any party aggrieved by such decree may appeal therefrom in the manner now or hereafter provided by law for appeals in civil actions;[64] (*e*) such decree shall be filed with the clerk and a certified copy thereof filed with the registrar, who shall thereupon issue a certificate of title to such person declared by said decree to be the owner of any parcel of land in severalty and said registrar's act in filing said decree and issuing said certificate shall have the effect of bringing said land under the operation of this act as herein provided as of the date of filing of the petition.

(*f*) Said certificate shall contain a description of the property registered and shall also show the character of the ownership and whether or not the land is separate or community property and if community the names of both husband and wife, the nature, amount and order of the liens and incumbrances and other charges against the same and any other interest or condition which shall be found to exist by the decree.

22. (Secs. 14 and 15.) *Decree for registration.*
[*Title.*]

After due notice to all parties in interest of the hearing of this case it came on to be heard this ..... day of ....., 19....., upon the petition for registration, (*Make statement of the pleadings*), and upon the exhibits and testimony; and upon full consideration thereof the Court finds:

A.

That notice of the filing of the petition herein was duly published in the (*Name newspaper*), as required by law and in accordance with the former order of this court; that all persons

[63]It would appear that this clause contemplates that the decree, or a synopsis of it, should be entered on the certificate of title. But neither this section, nor Sec. 23 in specifying the requirements for the certificate, nor the form permitted by Sec. 24, mention the decree as a part of the certificate. It is therefore likely that a reference in the certificate to the decree, will be sufficient.

[64]Sec. 939, Code of Civil Procedure. Appeal from a final judgment in an action or special proceeding commencing in the court in which the same is rendered, must be taken within six months after the entry of judgment.

In an application to register title to a large number of lots if the defendant claims title to only two of such lots, a decree registering title to the lots in which defendant had no interest and continuing the case as to the other two, without adjudging costs to the defendant, does not affect the defendant, and he is not entitled to an appeal or a writ of evidence in advance of final termination of the question of title to the two lots he claims. Mundt vs. Glos, 231 Ill. 158.

interested in this action have either filed their assent to the registration herein, or have been duly and properly served with notice of the filing of the petition and that the time for their appearance has expired and that all such persons, known and unknown, are properly before the court; that the default of all persons so served, who have not appeared in answer thereto, has been entered, and as to them the allegations of the petition are taken as confessed and true.

ONE.

The Court finds that the petiitnoer, D. B.,[65] who resides at—· and whose occupation is ....., is of the full age of twenty-one years and not under any legal disability; that he is not married (*or,* that he is married and the full name of his wife is C. B.)

*The Court further finds from the abstract of title, (the report of F. G. B., the examiner of titles to whom said abstract was referred), and the evidence that the said D. B. is, as claimed in his application, the owner in fee simple of the land therein described, That it is his separate[66] property and is (*or,* is not) subject to homestead. The land above referred to is described as follows, to-wit: (*Describe*).

*If the title is based on adverse possession, as provided for in Sec. 6, find as in the foregoing to * and continue:*

The Court further finds that the land described in the application of said D. B. was acquired by him by deed dated..... and recorded in Book....., page.....of the.....County records, and that he has (*or,* that he and his predecessors in interest have) as alleged in the petition, been in the actual, exclusive and adverse possession of said land continuously, for more than five years next preceding the filing of the petition herein, claiming to own the same in fee simple as against the world, and that he has (*or,* that they have) paid all taxes of every kind, legally levied or assessed against said property during the period of such possession; that the character of such possession has been (*State character and occupany so as to bring it under one of the definitions required for adverse possession in Secs. 322 et seq. of the Code of Civil Procedure. See not 40 to Sec. 6.*) that the title to said land is thereby legally vested in the said D. B. as owner in fee simple; that said land is his separate property and is (*or,* is not) subject to homestead and is described as follows: (*describe.*)

[65]If the application is by two or more persons as tenants in common find the undivided share of each. Each may have a certificate for his undivided share, by Sec. 25.

[66]If it is community property find the fact and who the community owners are.

II. The Court finds that said land is subject to the following estates, liens, and incumbrances, with relative priorities in the order here named, to-wit:

On Parcel No. One,

1st. Mortgage to R. S. whose post office address is ....., for the sum of ....., dated .....; payable ..... after date, with interest at ..... percent per annum, payable ..... Recorded in Book ....., page ....., in the office of the Recorder of the County of ....., California.

2nd. Etc., etc.

*If occupied by other than owner state nature and terms. Also include any of existing conditions noted under Sec. 34.*

On Parcel No. Two,

Etc.

TWO.

The Court finds that the petitioner, A. M., is a minor of the age of.....years (*Make statement as to residence, occupation, and marriage, as in* ONE), and that L. G., by whom this application is made, is his legally appointed guardian and has the custody of his estate.

*Continue as from* * *in* ONE.

THREE.

The Court finds that the petitioner, A. E., is the legally appointed administrator of the said A. B. as stated in his application; that the said A. B. was in his life time (*Make statements as to marriage, and other facts necessary to show in whom the title to the land held by A. B. is now vested.*)

*Continue as from* * *in* ONE.

FOUR.

The Court finds that the petitioners, W. C. and M. C., are husband and wife (*State as to residence, occupation, age, and disability and continue as from* * *in* ONE, *and if community property, so find*).

FIVE.

The Court finds that the petitioner, The C. H. R. Company, is a corporation duly organized under the laws of the State of ....., and that L. A. is the duly authorized agent of the said Company.

*Continue as from* * *in* ONE.

And now the Court having determined the title of the several applicants to the land claimed by each, finds and so adjudges, that no other person, firm or corporation has any claim in, or to, any part of said tracts of land in law or equity, in possession, occupancy, reversion, expectancy or otherwise adverse to the title and interest of the persons as herein found.

B.

**Conclusion of Law**[67]

As conclusion of law the Court finds that the applicants as herein found are entitled to have their lands herein described brought under the operation of the act for the certification of land titles, etc., enacted by the People of the State of California at the general election held November 3, 1914, and it is so adjudged and decreed.

**Decree**

It is therefore adjudged and decreed that the title of each of the petitioners to the land, so found to belong to each, be confirmed and registered, and it is ordered that the Registrar, upon a certified copy of this decree being filed with him, issue a certificate of title as provided by law, to each of the persons herein for the land found to belong to him or her. And this decree shall, as provided in said act, forever quiet the title to the land herein ordered registered and be final and conclusive as against the rights of all persons,known and unknown, to assert any estate, interest, claim, lien or demand of any kind or nature whatsoever, against said land or any part thereof, except only as herein found and in the act provided.[68]

It is further ordered that the sum of $..... be allowed as abstract fees, and the sum of $..... as the fee of the Examiner of titles, as part of the costs herein, which costs shall be paid by the applicants. (*State in what proportions.*)

Sec. 16. EFFECT OF DECREE:—A decree of the Court ordering registration shall be in the nature of a decree *in rem,* shall forever quiet the title to the land therein ordered registered and shall be final and conclusive as against the rights of all persons, known and unknown,[63] to assert any estate, interest, claim, lien or demand of any kind or nature whatsoever, against the land so

[67]Sec. 632 of the Code of Civil Procedure. In giving the decision the facts found and the conclusions of law must be separately stated. Judgment upon the decision must be entered accordingly.

In proceedings to register land under the Torrens Act the Court should, where issue is joined, make findings of fact and conclusions of law, as in ordinary cases. Owsley vs. Johnson, 95 Minn. 168; Kuby vs. Ryder, 114 Minn. 217.

[68]By Sec. 16.

[63]*Held,* that by the phrase "all other persons or parties unknown" all the world are made parties defendant and shall be bound and concluded by the decree of registration, and further that the decree shall be binding and conclusive upon all persons, whether mentioned by name or included in the phrase "all other persons or parties unknown." Doyle vs. Wagner, 108 Minn. 442.

After the expiration of the period fixed by the statute a title duly and regularly registered under the Torrens system is, unless registration was obtained by fraud, indefeasible. Baart vs. Martin, 99 Minn., 197.

ordered registered or any part thereof, except only as in this act provided.

REGISTRATION IN OTHER PROCEEDINGS.

Sec. 17. Whenever any proceeding is hereafter commenced in the Superior Court of any county by any person either for themselves or in a representative capacity, wherein it is sought to quiet, establish title to, partition land or to administer upon any estate of a deceased person where the estate consists in whole or in part of land, and in which proceeding the court has or can acquire jurisdiction of such land *in rem,* any decree rendered in any such proceeding quieting or establishing the title to any land or partitioning or distributing land may order such land registered under this act whenever, in such proceeding, notice of the intention [25] to include an order of registration thereof in any such decree shall have been published and service thereof made on all persons interested in the manner required by this act and when, in the application for such notice [23] in such proceeding, the facts required to be set forth by sections 5 and 6 of this act are alleged.

By the foregoing Sec. 17, registration may be decreed in proceedings in the Superior Court.

1st. To quiet title.

2nd. To establish title.

3rd. To partition land.

4th. To administer upon any estate of a deceased person,[64] where the estate consists in whole or in part of land.

Under this section, there shall be:

a. An application for notice of intention to include an order of registration in the decree. In this application the facts required by sections 5 and 6 must be alleged as in the petition for registration, this application taking the place of the petition in proceedings for initial registration.

b. Order of the Court that notice be given and published.

c. The Notice, which shall be published and service thereof made in the same manner as provided for service of notice of filing a petition, by Sec. 12.

d. The order of court, in any decree rendered in any of the above named actions, that the land be registered.

[64]An administrator or executor instead of filing an application under the above section, may by Sec. 5, (q) file an independent petition in the Superior Court, or by Sec. 46, may file a petition in the Probate proceedings praying for the registration of all land belonging to the estate in fee simple.

23. (Sec. 17.) *Application for notice of intention to include registration in decree.*

(*Title of case in which proceedings are being had.*)

Now comes A. B., the plaintiff in this action, and makes application to have the land described in the petition herein, to-wit: (*Describe*) registered in this proceeding, under the act for the certification of land, titles, etc., enacted by the People of the State of California, at the general election held November 3, 1914, and sets forth the following facts: (*State facts required by Secs. 5 and 6 as in one of the petitions for registration.*)

Plaintiff further makes application to the Court that notice of his intention to include an order for registration in any decree that may be rendered herein, be given and published as provided by said act, and for such other relief as may be equitable and just.

(*Verify as in case of petition for registration.*)

24. (Sec. 17.) *Order that notice of intention to include registration in other proceedings, be given.*

(*Title of case in which proceedings are being had.*)

The Court having duly considered the application of A. B. for registration in this proceeding, of the title to the land in the petition and application described, and for notice thereof, and the court having jurisdiction of such land *in rem,* it is ordered that notice of the intention of said A. B. to include an order for registration of said land in any decree that may be rendered in this case be given as provided in the act for registration of titles, directed to all persons named in this action as having an interest in the land, and to all other persons known and unknown, who have or claim to have an interest in, or lien upon any part of said land, and to all whom it may concern.

The notice attached hereto is approved, and it is ordered that it be published in The ....., a newspaper of general circulation, published in this County, once a week for four successive weeks, and service made as provided by the act aforesaid.

25. (Sec. 17.) *Notice of intention to include registration in other proceedings.*

In the Superior Court of California, in and for the County of .....

(*Title.*)

The State of California to the above named defendants, and to all persons, known and unknown, who have or claim to have any interest in, or lien upon any part of the land described herein and to all whom it may concern, Greeting:

You and each of you are hereby notified that A. B., ..... in the above action, did, on the ..... day of ....., 19....,

file in this case an application to the Court for registration in this proceeding of the title to the land described in the petition, to-wit: (*Describe*); and for an order for notice of his intention to include registration herein; and pursuant to an order of the Court granted therefor, you are hereby notified of the intention of the said A. B. to include an order for registration of said land in any decree that may be rendered in this action; as provided by the act for the certification of land titles, etc., enacted by the People of the State of California at the general election held November 3, 1914.

You are therefore directed to appear and answer said application, etc. (*Continue as from * in No. 15.*)

For the order for registration, include in the decree rendered in the action to quiet title, or other action named in Sec. 17, the findings and order for registration as given in the general decree for registration, No. 22, as far as applicable.

ABSTRACT REFERRED TO EXAMINER OF TITLES.

Sec. 18. Upon the filing of the petition or thereafter, the court may, in its discretion, appoint an examiner of titles to whom any abstract or abstracts may be referred for examination [26.]. Such examiner of titles shall be an attorney in good standing, skilled in the examination of titles and admitted to practice before the Supreme Court of the State for at least five years preceding his appointment. The compensation of such examiner shall be agreed upon between the applicant or other parties and the examiner or if not agreed upon shall be fixed by the court and such compensation shall be paid by the person or persons in whose favor registration is granted as a part of the cost of the proceedings. More than one examiner may be appointed in any county is desired.

26. (Secs. 18 and 19.) *Order referring case to examiner of titles.*

(*Title.*)

It appearing that the abstract of title furnished in this case requires more time for its consideration than can be given by the Court, it is hereby referred to J. M., an Examiner of Titles, duly qualified therefor as required by law, who is hereby appointed to examine the said abstract and to investigate all the facts pertaining to the title of the land described in the petition herein, which shall be brought to his notice; and that he make report in writing, with a certificate of his opinion on the title, to this Court, within ..... days.

EXAMINER OF TITLES.

It was said in the case of State ex rel. vs. Westfall, 85 Minn. 446, that the examiners provided for by the Torrens Act of that

State are subordinate officers or assistants of the courts, to aid them in the discharge of the official duties imposed upon them by the act.

The provision for referring a case to a title examiner, by Sec. 18 appears to contemplate cases only where an abstract of title has been filed. But in many cases where an abstract is not required it will be to the advantage of all parties, and the relief of the court, that such reference should be made.

Under such circumstances the court undoubtedly may, as in other civil actions, under sections 638 and 639 of the Code of Civil Procedure, send the case to a referee to ascertain facts and report. And of course this referee may be a title examiner, or may be a deputy registrar, as provided by Sec. 108. But where there is no abstract to be examined, it would not appear that the referee must necessarily have the qualifications required of the title examiner or the deputy registrar by these sections. In such cases an entry like the following may be made.

27. *Order seding case to referee, to report facts.*
(*Title.*)

It appearing to the Court that there are questions of fact to be investigated pertaining to the title of the land described in the petition herein which can not conveniently be ascertained or determined by the Court, it is therefore ordered that the case be referred to A. S. L., as referee to investigate all the facts pertaining to such title, which shall be brought to his notice; and that he make report in writing within ..... days.

Sec. 19. REPORT OF EXAMINER:—Whenever an Examiner of Titles is appointed and any abstract is referred to him for examination, he shall proceed to examine into the title of the land described in the application and shall investigate all facts[65] pertaining to the title which shall be brought to his notice and shall file a written report [28.] with the Court together with a certificate of his opinion upon the title.[66] No decree shall be entered by the Court in cases where a reference is had, until the written opinion of such examiner shall be filed. The Court shall not be bound by any report of such examiner but may require other or further proof.

---

[65]Just how the facts are to be brought to his notice is not stated. In the Illinois act full provision is made for the taking of testimony, with power to administer oaths and examine witnesses, by the examiner. And it was said in the case of Gage vs. Consumers E. L. Co., 194 Ills. 30, that the examiner in his relations to the court and to the case referred to him, acts in the same way and under the same rules as a Master in Chancery. His rulings on questions of fact could be contested and objections filed before him and exceptions before the trial court.

It would certainly appear that similar powers should belong to the examiner under our act, in order that full justice in the investigation

28. (Sec. 19.) *Report of examiner of titles.*

In the Superior Court of the State of California, in and for the County of .....

(*Title.*)

To the Superior Court in and for the County of.....

Pursuant to an order heretofore entered in the above entitled case referring the abstract of title to the undersigned Examiner of Titles, I respectfully report that I have carefully examined into the title of the land described in the petition and have investigated all facts pertaining to the title which have been brought to my notice and find the facts to be as follows:

I.

The property of ..... is correctly described in the peti-

---

by him may be done, and an impartial and just report be made to the court. For while the court is not bound by the report, (Sec. 19), much additional time and expense would be wasted by another investigation.

[66]If the Examiner's report contains sufficient competent evidence to support his findings, it can not be assigned for error that he admitted incompetent evidence over objection. It will be assumed on appeal or error that he considered only the competent evidence in making his findings. McMahon vs. Rowley, 238 Ill. 31.

Objections to the Master's rulings on evidence should be made before his report is returned, and if not acted upon favorably by the Master should be renewed as exceptions to the report before the chancellor. Glos vs. Hoban, 212 Ill. 222.

In a proceeding for registration of title the same rules apply to the mode of reserving for review, objections to the report of the examiner of titles as are applicable to objections to the report of the Master in Chancery. Ib.

An objection to the report of the examiner of titles is in the nature of a special demurrer, and it must point out the grounds of the objection with clearness and certainty. An objection that the examiner erred in finding that the applicant for initial registration of title was seized of a title in fee is not sufficiently specific to preserve the question as to the sufficiency of the preliminary proof for the admission of abstract of title in evidence. Ib.

A finding of fact by the examiner of titles in a title registration proceeding, must be regarded by the court of review as conclusive, where it is not excepted to Keeney vs. Glos, 258 Ill. 555.

Where the defendant to an application to register title does not object to admission in evidence of preliminary proof, but asks and obtains permission to file objection later, he is not entitled, after the applicant's testimony is closed, to urge before the examiner specific objections, in writing, which should have been made orally at the time the evidence was offered. Bjork vs. Glos, 256 Ill. 447. Carlson vs. Glos, 257 Ill. 149.

Exceptions to the report of an examiner of titles must not be so general as to require a search through the evidence to ascertain whether they are well taken, but must point out the evidence objected to and the reasons for the objection. Same case.

Objections to the competency of a witness must be made before the examiner. O'Laughlan vs. Covell, 222 Ill. 162.

tion and abstract and consists of (*Describe location and surroundings.*)

II.

The records show the title of the applicant, ....., to be derived as set forth in the petition. (*Make any special finding required.*)

III.

*Find whether the land is separate or community property, and whether or not subject to homestead, or claim for homestead, and whether or not a declaration has been filed; and the tax valuation of the land and improvements.*

IV.

*As to occupancy of the land, whether vacant or improved. If improved, the character of the improvements; whether occupied by the owner or a tenant or other claimant, and if by another what interest is claimed by such occupant, particularly as to any adverse claims.*

V.

*As to owners of adjoining lands, and if any conflicting interests.*

*If registration is asked on title by adverse possession, find as to time of possession by owner and each of his predecessors in interest, for five years, and payment of taxes, having in view the provisions of Sec. 6, stating the character of the possession, bringing it under some one of the definitions of possession required by the general statute, as set forth in Note 40, Sec. 6.*

VII.

*Find as to liens, easements, and incumbrances on the property. And in this connection find as to those named in Sec. 34; any subsisting lease with or without actual occupation; any dedication of land for a public highway; any right of way or other easement created within a year before issuance of certificate; current taxes and any special assessment and what payments made; any right of action or claim allowed by the act that can be ascertained; and as far as possible any liens, claims or rights under the laws of the United States.*

VIII.

*Find any other facts necessary, pertaining to the title.*

OPINION.

From the foregoing findings of facts it is my opinion that the title to the land described in the petition is substantially as alleged, and that the applicant, A. B., is entitled to have notice of the filing of his petition given as provided by law.

All of which is respectfully submitted this ..... day of ....., 19.....

*F. G. B.,*
Examiner of Titles.

29. (Sec. 19.) *Report of examiner approved.*[67]

(*Title.*)

This cause now coming on to be heard on the report of J. M., Examiner of Titles to whom the abstract of title was heretofore referred, and on the exhibits connected therewith, and the Court having fully considered the same (*and the exceptions and objections thereto.*)* the sail report is hereby approved and confirmed, and the findings of facts therein are adopted as the findings of the Court.

*If an order is made at this time that notice of the filing of the petition be given, continue as from * in entry No. 11.*

30. (Sec. 19.) *Report of examiner considered and further proof ordered.*

(*Title.*)

(*As in last entry * and continue*):—the Court finds that the proof adduced to establish the fact that (*State the fact not sufficiently proven*) is not, in the opinion of the Court, sufficient therefor;

*Or,* that the opinion of the said Examiner as to the validity of the title is not sufficiently sustained by the evidence and records shown in the exhibits.

It is therefore, on motion of ....., ordered that the case be referred to said Examiner for further proof if it can be obtained, in respect to the matters above referred to, and report made to this Court.

*Or, the order may be that the further proof be presented to the Court.*

*Or, as in entry No. 29 to * and continue:*—finds that certain evidence which it considers important (*Specify*) was improperly rejected by the Examiner. It is therefore on motion of ..... ordered that the case be re-referred to said Examiner to hear such evidence, and make report to this court.[68]

Sec. 20. APPLICATION MAY BE WITHDRAWN:—Any applicant may, upon payment of all fees due, withdraw his application at any time prior to the hearing thereof,[69] and upon the written re-

[67]After the death of an Examiner, the court may approve the portion of the report that was before it, prior to death. McMahon vs. Rowley, 238 Ill. 31.

[68]It is proper to re-refer a cause to the examiner to hear evidence which the court considers important, that had been rejected. McMahon vs. Rowley, 238 Ill. 31.

[69]The right to have a petition dismissed is one which can be asked for as a matter of right by the petitioner, only when it relates to the entire tract described in the petition. When it relates to a part only, it may properly be denied by the Court. Foss vs. Atkins, 204 Mass. 337.

The application may be dismissed at any time by the applicant, over the objections of any defendant, as to the entire property involved and as to any part thereof. Glos vs. Murphy, 225 Ill. 58.

quest [31] of such applicant and the order of the Court [32] the clerk shall return to the applicant all abstracts of titles, deeds, and other instruments, except depositions or affidavits deposited by him for the purpose of supporting his application.

31. (Sec. 20.) *Request for withdrawal of application.*

(*Title.*)

The applicant in this case asks the Court for leave to withdraw his application for registration filed herein, and requests the return to him of the abstract of title and all deeds and other instruments filed in the case.

.....

Applicant.

32. (Sec. 20.) *Allowing application to be withdrawn.*

(*Title.*)

Now comes the applicant, and his written request for the withdrawal of his application for registration of title herein, being considered, the Court grants such request, upon the payment by the applicant of all fees due in the case; and on the payment of such fees, the clerk is hereby directed to return to the applicant all abstracts of titles, deeds and other instruments, except any depositions or affidavits, filed or deposited by him in the case.

Sec. 21. ON DEATH OR DISABILITY OF APPLICANT:—In case of the death or any disability of the applicant, the court, on motion, may allow the proceeding to be continued by or against his representative or successor in interest. [33.] (*a*) In case of any other transfer of interest the proceeding may be continued in the name of the original applicant, [34.] or the court may allow the person to whom the transfer is made to be substituted in the proceeding.[70] [35.]

33. (Sec. 21.) *On death or disability of applicant, representative made party.*

(*Title.*)

Now comes A. L., by his counsel, J. B., and suggests to the Court the death (*or,* disability) of A. B., the applicant herein, and states that he is the duly qualified administrator (*or other representative*) of the said A. P., and moves the Court for leave to become a party to this action, and to continue the same. And the Court finding the suggestion to be true, grants such motion, and said A. L., administrator, is accordingly made party applicant in this action, and the action proceeds.

---

[70]In the case of Foss vs. Atkins, 204 Mass. 337, the court refused to allow a respondent to amend the petition by substituting his name as petitioner for the registration of the title to a part of the land described in the original petition to which he had been found the owner. He should bring an independent action.

34. (Sec. 21.) *On transfer of interest, action continued for benefit of transferee.*

(*Title.*)

Now comes E. C. B., by his counsel, and represents to the Court that since the filing of the petition herein he has purchased from the applicant, D. B., the land sought to be registered, and moves the Court* that the case be continued for his benefit in the name of the original applicant. And the Court being satisfied of the truth of the allegation grants such motion, and the action proceeds.

35. (Sec. 21.) *On transfer of interest, transferee substituted.*

(*Title.*)

*As in last to * and continue:*—for leave to be substituted for said D. B., as applicant herein. And the Court, being satisfied of the truth of the allegation, grants such motion and the said E. C. B. is accordingly substituted as the applicant herein, and the action proceeds.

REGISTRATION AND CERTIFICATE—DELIVERY OF DUPLICATE.

Sec. 22. Immediately upon the filing with the registrar of the certified copy of the decree ordering registration, he shall proceed to register the title in accordance with the directions of the decree and issue a certificate or certificates of title in the manner herein directed ; (*a*) and the registrar shall also immediately make an entry in a book kept by him for that purpose showing the name of the person to whom the certificate was issued, its number, the day, hour and minute of its issuance, the name of the person to whom the duplicate certificate was delivered and the book and page where the original certificate is entered or recorded. In said book there shall be provided a place for the signature of the person to whom a certificate is issued upon giving receipt for such certificate as provided for by Sec. 30 of this act and where in cases where such receipt is not signed in the presence of the registrar, the same may be pasted. Such receipts when so signed and witnessed or acknowledged shall be prima facie evidence of the genuineness of the owner's signature.

The registration provided for in the above section will be made in the "register of titles," Sec. 29; and the registrar must in addition to that book keep another showing to whom the duplicates are delivered. This book may have each page printed as follows:

DUPLICATE CERTIFICATES OF TITLE DELIVERED.

No.....

Original Certificate entered in "Register of Titles," Vol....., Fol.....

Certificate issued to .....

Date of issue: Year, 19.....; Month....., Day....., Hour....., Min.....
Duplicate Certificate delivered to.....[71] Owner.

RECEIPT.[72]

RECEIVED, this ..... day of ....., 19....., from C. L. Logan, Registrar of Titles, Duplicate Certificate, No. .....
....., Owner.
By .....
Address.....
Telephone No. .....
Witness[72].....
Registrar.

CERTIFICATE OF TITLE.

Sec. 23. Every first and subsequent certificate of title shall be in duplicate and numbered consecutively and bear date the year, month, day, hour, and minute of its issue, and shall be under the hand and official seal of the registrar.

(*a*) One copy of said certificate shall be retained by the registrar and be known as the original, [36.] and the other shall be delivered to the owner, or person acting for him, and be known as the duplicate.

(*b*) The certificate shall state whether the owner, except in the case of a corporation, executor, administrator, assignee, or other trustee, is married or not married, and, if married, the name of the husband or wife. If the owner is a minor, it shall state his age; if under any other disability, the nature of the disability. If issued to an executor or administrator, the certificate shall show the name of the deceased testator or intestate; if to an assignee in insolvency or trustee in bankruptcy the name of the insolvent or bankrupt.

(c) The registrar shall note at the end of the certificate, original and duplicate, in such manner as to show and preserve their priorities, the particulars of all estates, mortgages, liens, incumbrances, and charges to which the owner's title is subject.

THE ORIGINAL CERTIFICATE OF TITLE.

The entry made in the "Register of Titles," a book to be kept by the registrar, as provided in Sec. 29, constitutes the original

[71]When the duplicate is delivered to another for the owner, as permitted by Sec. 23 (a), write in FOR. But in that case the receipt of the owner, duly acknowledged, must also be furnished, and be pasted in the book.

[72]By Sec. 30, a receipt must be signed by the owner. If not signed by the owner in the presence of the registrar or deputy it must be acknowledged before an officer authorized to take acknowledgements and will then be pasted in this book. Proper blanks for that purpose should be kept by the registrar.

certificate in every first and subsequent certificate of title; and the number of each with its duplicate will be that of the folium of such "Register of Titles" on which it is entered. See sections 29 and 48.

The following is given as a form for such folium, consisting of two pages, which being filled, constitutes the original certificate. **36. (Sec. 23).**

CERTIFICATE OF TITLE.

Vol....., Folium.....

State of California,
County of..... } *ss.*

First registration issued.....pursuant to a decree of the Superior Court in and for said County, rendered on the ..... day of ....., 19....., in registration proceedings No. .....

(This certificate transferred from previous certificate No. ....., by reason of transfer of the land herein by ..... from ..... to A. B., dated ....., Filed ....., File No. .....[73])

THIS IS TO CERTIFY that D. B., .....
.....
being of full, *or, a minor of the* age of.....years, and under .....legal disability,[74] .....
residing at No. ..... street in the ..... of .....
Occupation .....
..... *Married,* .....
..... the owner..... in fee simple[75].....
.....
.....
of the following described lands in the County of....., State of California, to-wit:

(*Space for description.*)

That said property is ..... community property and ..... subject to homestead .....
SUBJECT, HOWEVER, to the estates, easements, liens, incumbrances, and charges in the memorials and hereunder noted and free from all others except any that may be substituting as noted in Section

[73]See Sec. 48 (a).

[74]If under any legal disability, state its nature. Sec. 23.

[75]If administrator or executor state fact and give name of deceased, and if given a power of sale by the will the words, "With power of sale" must be registered. Sec. 75. If he be assignee in insolvency or trustee in bankruptcy give name of insolvent or bankrupt. If acting in any other special capacity, state what. Secs. 23 and 24.

If owner is tenant in common with others, see Sec. 25 and find and issue certificates accordingly. In case of trust, condition, or limitation, say, "in trust," "upon condition," or "with limitation." Sec. 67. If power of sale is conferred say "with power of sale." Secs. 68 and 75.

34 of the act for registration of titles, as shown in the transcript of said Sec. 34 hereon. Also to right of appeal as noted hereon. [76]

.....

.....

MEMORIALS.

[2nd. Page.]

Documents with priorities in the order as here numbered.

| File No. | In whose favor | Date of Filing, Y.M.-D.H.-Min. | Nature, Amount, Terms | Signature of Registrar |
|---|---|---|---|---|

[*Leave space for miscellaneous memorials and notations.*]

In witness whereof I have hereunto set my hand and caused my official seal to be affixed, this ..... day of ....., 19....., at ..... o'clock ..... Min. .....M.

(SEAL)

.....

Registrar of Titles, in and for the County and State above named.

*Print on the folium of the registrar and on the duplicate certificate, Sec.* 34 *and the following:*

Right of appeal exists for six months after entry of decree, by Sec. 939, Code of Civil Procedure.

DUPLICATE CERTIFICATE.

The duplicate must be a copy of the original. It is well to have space on the duplicate, when folded, for making a plat of the property.

Sec. 24. FORM OF CERTIFICATE:—No particular form of certificate of title is required, but the same may be, subject to such changes as the case may require, substantially in the following form:

State of California,
County of..... } *ss.*

A. B. (state occupation and residence, giving street and number), State of California (if an administrator, give the name of the deceased; if a minor, give his age; if under other disability, state its nature), married to (name of husband or wife, or if not married so state), is the owner of an estate in fee simple (or as the case may be) in the following land (insert description contained in the decree). Subject, however, to the estates, easements, liens, incumbrances, and charges hereunder noted. (In case of trust, condition, or limitation, say "in trust," or "upon condition," or "with limitation," as the case may be.)

1. Mortgage to ..... for the sum of $....., dated ....., payable ..... after date, with interest at ..... per cent per

[76]By Sec. 56, in case a tax sale is shown by the last certificate, add, "subject also to the tax sale of said land made on the ..... day of .....19.., to.....as shown by the last certificate."

....., interest payable .....

2. Mechanic's lien in favor of X. Y. for $....., filed.....

3. Assessment for improvement of ..... street. Amount $....., due.....

(Any other incumbrances or charges.)

In witness whereof, I have hereunto set my hand and caused my official seal to be affixed, this ..... date of .....

.....

Registrar of Titles in and for the County
(SEAL) of ....., State of California.

Sec. 25. TENANTS IN COMMON:—In all cases where two or more persons are entitled as tenants in common to an estate in registered land, such persons may receive one certificate for the entirety, or each may receive a separate certificate for his undivided share.

Sec. 26. CERTIFICATES EXCHANGED:—Upon the application of any registered owner of land held under separate certificates of title, or under one certificate, and delivering up of such certificate or certificates of title, the registrar may issue to such owner a single certificate for the whole of such land, or several certificates, each containing a portion of such land, in accordance with such application, and as far as the same may be done consistently with any regulations at the time being in force, respecting the certificates of land that may be included in one certificate of title; and upon issuing any such certificate of title said registrar shall indorse on the last previous certificate of title of such lands so delivered up a memorial [37, 38.] setting forth the occasion of such cancellation and referring to the volume and folium of the new certificate or certificates of title so issued.[77]

37. (Sec. 26.) *Memorial on cancelled certificates, when one issued for several.*

This certificate is cancelled by reason of new certificate No..... being issued in place of this one and Nos..... and ....., at owner's request, this ..... day of ....., 19.....

.....

Registrar.

38. (Sec. 26.) *Memorial when several issued for one.*

This certificate is cancelled by issuance in place of it, at request of owner, of new several certificates, Nos. ..... and ....., this ..... day of ....., 19.....

.....

Registrar.

[77]On the back of all cancelled certificates write or stamp, CANCELLED.

Sec. 27. ON LOSS OF DUPLICATE:—In the event of a duplicate certificate of title being lost, mislaid, or destroyed, the owner may apply to the court for an order upon the registrar to issue a certified copy of the original certificate of registration [39.]. Upon the hearing of such application, the court may order such notice to be given to such persons and for such time as it may deem proper. [41.] If the court is satisfied that the applicant is the person named in the original certificate on file in the registrar's office, and that the duplicate certificate has been lost, mislaid, or destroyed, the court shall make an order directing the registrar to issue a certified copy of the original certificate to the applicant. [40, 42.] A certified copy of such order shall be filed in the registrar's office, who shall thereupon issue to such applicant a certified copy of the original certificate, with the memorials and notations appearing upon the register, and shall note upon the register the fact, cause and date of such issue and shall also mark upon such certified copy: "Owner's certified copy, issued in place of lost (mislaid, or destroyed, as the case may be) certificate," and such certified copy shall stand in the place of, and have like effect as, the missing duplicate. (*a*) In case of a lost certificate, no transfer of the land shall be made until such certified copy is issued by the registrar.

(*b*) A certified copy of the certificate of title may be issued by the registrar for use as evidence, upon the receipt by him of an order therefor made by the court [43.] provided, that such certified copy shall have written or stamped across the face thereof the words "for use as evidence only." The issuance of such certified copy and the purpose thereof shall also be noted upon the original certificate by the registrar.

39. (Sec. 27.) *Application for certified copy of certificate, on loss of duplicate.*

(*Title.*)

The undersigned hereby represents to the Court that his Duplicate Certificate of Title, No. ....., has been lost or mislaid (*or,* destroyed), and prays the Court for an order on the Registrar to issue to him a certified copy of the original certificate in his office.

(*Signed*) E. W.

40. (Sec. 27.) *Order granting request for certified copy of original certificate, without notice.*

(*Title.*)

The application of E. W. for an order upon the Registrar for a certified copy of the original certificate of title No. ....., now being heard, and the Court not deeming it necessary that notice of such application should be given to the parties herein, * and being satisfied from the evidence that the said E. W. is the person

named in such original certificate of title † and that his duplicate certificate has been lost or mislaid (*or,* destroyed) as alleged, his application is granted. It is therefore ordered that the Registrar, on the filing of a certified copy of this order in his office, and on the payment by the applicant of the charges for such copy, issue to him a certified copy of such original certificate with the memorials and notations thereon, as provided by the act therefor.

41. (Sec. 27.) *Notice of application ordered.*
(*Title.*)
The application of E. W. for a certified copy of certificate of title No. ....., now being presented to the Court, on consideration thereof the Court directs that the hearing of said application be set down for the ..... day of ....., 19....., in this court at ..... o'clock .....M. and that ..... days notice of such time and place be given to (*Name who shall be served with notice*).

42. (Sec. 27.) *Order granting request of, after hearing.*
(*Title.*)
The application of E. W. for an order upon the Registrar for a certified copy of the original certificate of title No. ....., coming on for hearing this ..... day of ....., 19....., the Court finds that due notice has been given to all persons in interest, as heretofore directed. (*Conclude as from * in entry No.* 40).

43. (Sec. 27.) *Order for certified copy of certificate, to be used as evidence.*
(*Title.*)
Now comes ..... by his counsel, ....., and makes application to the court for the issuance of a certified copy of certificate of title No. ....., to be used only as evidence in a certain proceeding in (*Name court and proceeding where it is to be used*) and the Court on consideration grants the same. It is therefore ordered that the Registrar, on receipt of this order and on payment of the cost therefor, issue such certified copy, and write across the face thereof, "For use as evidence only."

Sec. 28. CORRECTION OR CHANGE IN CERTIFICATE:—If an owner's name or description is incorrectly registered, or becomes changed (e. g. by marriage, adoption, divorce, etc.), the court, upon the filing of an application [44.] and proof of facts in the manner set forth in section twenty-seven of this act, and the production by the owner of the duplicate certificate, shall order the registrar to issue a new certificate, with such change as the case may require. [45.]

44. (Sec. 28.) *Application for change of name in certificate.*
(*Title.*)
The undersigned now comes and represents to the Court that

he (*or,* she) is the owner of duplicate certificate of title No. ..... and of the land therein described, owned and held under the name of ....., and that his (*or,* her) name has been changed by ..... to ..... since the issuance of the certificate; and he (*or,* she) therefore makes application to the Court for a new certificate of title to be issued to him (*or,* her) with the change of name therein as here stated.

(*Signed*) E. W.

If notice of the application be ordered to be given, use form of Entry No. 41.

It would appear that this application may be heard and acted on by the Court without notice to other parties, in its discretion.

Section 98 provides more fully for making corrections or alterations in the certificate, by filing a petition on which summons shall issue and the case be set for hearing and heard after notice to all parties. But that section expressly provides that the changes in name there referred to are "other than by marriage as provided for in section 28 of this act."

It would appear therefore that either proceeding, that of section 28 or of section 98 is applicable to the changes provided for in section 28, except that of change of name by marriage.

If the above views are correct, use the following entry, in case notice is not required, by the Court, of the hearing.

45. (Sec. 28.) *Order granting application for correction or change of name, without notice.*

(*Title.*)

The application of E. W. for correction (*or,* change) of ..... name, in certificate of title No. ..... in this case, now coming up for hearing, and the Court not deeming it necessary that notice of such application should be given to the parties herein, and being satisfied from the evidence that the said E. W. is the person* incorrectly named in the certificate as L. W. and that the correction asked for should be made (*or,* that the said E. W. is the person named in the certificate as E. B. and that such name has been changed by ..... to E. W. and should be so changed in the certificate), it is therefore ordered accordingly; and it is ordered that the Registrar, on receipt of a certified copy of this order with the duplicate certificate of title and the costs hereof, issue a new certificate to the said E. W., with the change here ordered.

46. (Sec. 28.) *Order for correction (or, change) of name, after hearing.*

(*Title.*)

This case coming on for hearing this ..... day of ....., 19....., on the application heretofore filed by E. W. for correction (*or,* change) of ..... name in the certificate of title, the

Court finds that due notice has been given to all persons in interest, as heretofore directed by the Court; and the Court being satisfied from the evidence that the said E. W. is the person (*Conclude as from * in last entry.*

"REGISTER OF TITLES."

Sec. 29. The Registrar shall keep a book, to be known as the "Register of Titles," wherein he shall enter all original certificates of title, in the order of their numbers, with appropriate blanks for the entry of memorials and notations allowed by this act. Each certificate, with such blanks, shall constitute a separate folium of such book. All memorials and notations that may be entered upon the register under the terms of this act shall be entered upon the folium constituted by the last certificate of title of the land to which they relate. Each certificate of title shall be numbered the same as the folium of the register on which the registration of the title of which it is a duplicate, is entered.

The record made in the "Register of Titles" constitutes the original certificate of title. It must therefore be in a form to be conveniently duplicated. As a convenient form for the printed part of a folium, see No. 36, *ante*.

It will be more convenient to use two opposite pages of the "Register of Titles" for a folium.

Sec. 30. RECEIPT FOR DUPLICATE CERTIFICATE:—Before the delivery of any duplicate certificate of title, a receipt for it shall be required, to be signed by the owner. Where such receipt is signed in the presence of the registrar or a deputy, it shall be witnessed by such officer. If signed elsewhere, it shall be acknowledged before any officer authorized to take acknowledgements of deeds.

By section 22 this receipt should be printed or pasted in the book kept by the Registrar for the purpose of showing to whom the certificates of title are issued. See under that section, *ante*.

Sec. 31. WHEN LAND DEEMED TO BE REGISTERED:—In every case of first registration of land or an estate or interest therein, the same shall be deemed to be registered under this act, when the registrar shall have marked upon the certificate of title, in duplicate, the volume and folium of the register in which the original may be found.

Sec. 32. WHEN TRANSFER DEEMED TO BE REGISTERED:—Every transfer of registered land shall be deemed to be registered under this act, when the new certificate to the transferee shall have been marked, as in the case of the first registration; and all other dealing shall be considered as registered when the memorial or notation shall have been entered in the register upon the folium constituted by the existing certificate of title of the land. But, for

the protection of the transferee or person claiming through any transfer or dealing, the registration shall relate back to the time of filing in the registrar's office the deed, instrument, or notice, pursuant to which the transfer, memorial or notation is made.

Sec. 33. COMPLAINT AGAINST REGISTRAR:—Any person feeling himself aggrieved by the action of the registrar, or by his refusal to act in any manner pertaining to the first registration of land, or any subsequent transfer, or charge upon the same, or failing or neglecting, or refusing to file any instrument, or to enter or cancel any memorial or notation, or to do any other thing required of him by this act, may file a complaint in the Superior court making the registrar and other persons, whose interest may be affected, parties defendant, and the court may proceed therein as in other cases, and make such order or decree as shall be according to equity and the purport of this act. A certified copy of such order or decree shall be presented to the registrar, who shall file the same and make such entry thereof as by this act required.

REGISTFRED OWNER HOLDS SUBJECT TO WHAT ESTATES.

Sec. 34. The registered owner of any estate or interest in land brought under this act shall, except in case of fraud to which he is a party, or of the person through whom he claims without valuable consideration paid in good faith, hold the same subject only to such estates, mortgages, liens, charges, and interests as may be noted in the last certificate of title in the registrar's office, and free from all others, except:

1. Any subsisting lease or agreement for a lease for a period not exceeding one year, where there is actual occupation of the land under lease. The term "lease" shall include a verbal letting.
2. All land embraced in the description contained in the certificate which has theretofore been legally dedicated as or declared by a competent court to be a public highway.
3. Any subsisting right of way or other easement, created within one year before issue of the certificate upon, over, or in respect of the land.
4. Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
5. Such right of action or claim as is allowed by this act.
6. Liens, claims, or rights arising under the laws of the United States, which the statutes of California can not require to appear of record upon the register.

Section 34 should be printed on the certificate of title as a memorandum to the holder, as shown under No. 36. But at the same time as all of these conditions are of interest to the purchaser, information should be obtained in some way and be given

in some form in the certificate. The examiner of titles might investigate and report, and the facts be entered as memoranda on the certificate.

Sec. 35. ADVERSE TITLE NOT ACQUIRED BY POSSESSION:—After land has been registered, no title thereto adverse or in derogation to the title of the registered owner shall be acquired by any length of possession.

Sec. 36. TRANSFEREE NEED NOT INQUIRE INTO PREVIOUS REGISTRATION:—Except in case of fraud, and except as herein otherwise provided, no person taking a transfer of registered land, or any estate or interest therein, or of any charge upon the same, from the registered owner, shall be held to inquire into the circumstances under which, or the consideration for which, such owner or any previous registered owner was registered, or be affected with notice, actual or constructive, of any unregistered trust, lien, claim, demand, or interest; and the knowledge that any unregistered trust, lien, demand, or interest is in existence shall not of itself be imputed as fraud.

Sec. 37. FRAUD AND FORGERY:[78]—In case of fraud, any person defrauded shall have all rights and remedies that he would have had if the land were not under the provisions of this act; provided, that nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration, or of any person bona fide claiming through or under him.[79]

Sec. 38. DEED FORGED, ETC.:—If a deed or other instrument is

---

[78]This section is identical with Sec. 106.

[79]When the registration is obtained by fraud, and the owner of the land is not notified, as required by statute, the decree and the certificate of registration issued thereunder, may be vacated and set aside, as long as the title remains registered in the name of the person guilty of fraud. Or unless an innocent purchaser, for value, has obtained rights on faith of the record. Baart vs. Martin, 99 Minn. 197.

The above holding was made notwithstanding the fact that the Minnesota act does not in express words except fraud. It being held that it was not the purpose of the registration act to sanction fraud, that was prohibited by the general statutes.

Where an owner obtains a decree registering his title to land which is in all respects regular, but has fraudulently omitted to disclose the existence of an unrecorded mortgage or to make the mortgagee a party to the registration proceedings, and then conveys the land for a valuable consideration to a person who relies on the registry proceedings and has no knowledge of the mortgage, the purchaser takes title free from the mortgage. Henry vs. White, 123 Minn. 182.

The plaintiff was not estopped to seek the relief prayed, by a Torrens decree adjudging title in the defendant, she having been knowingly misnamed in the summons as bearing her former husband's name, and having neither appeared in the proceedings nor been personally served. Arnold vs. Smith, 121 Minn. 117.

registered, which is forged, or executed by a person under legal disability, such registration shall be void; provided, that the title of a registered owner, who has taken bona fide for a valuable consideration, shall not be affected by reason of his claiming title through some one, the registration of whose right or interest was void, as provided in this section.

Sec. 39. TITLE NOT AFFECTED BY UNREGISTERED ESTATE:—No unregistered estate, interest, power, right, claim, contract, or trust shall prevail against the title or a registered owner taking bona fide for a valuable consideration, or of any person bona fide claiming through or under him.

Sec. 40. CERTIFICATE CONCLUSIVE EVIDENCE:—In any suit for specific performance brought by a registered owner of any land under the provisions of this act against a person who may have contracted to purchase such land, not having notice of any fraud or other circumstances which, according to the provisions of this act, would affect the right of the vendor, the certificate of title of such registered owner shall be held in every court to be conclusive evidence that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described.

Sec. 41. In any action or proceeding brought for ejectment, partition, or possession of land, the certificate of title of a registered owner shall be held in every court to be conclusive evidence, except as herein otherwise provided, that such registered owner has a good and valid title to the land, and for the estate or interest therein mentioned or described, and that such registered owner is entitled to the possession of said land.

Sec. 42. REGISTER RECEIVED AS EVIDENCE:—The register of any land, and duly certified copies thereof, shall, except as herein otherwise provided, be received in law and in equity as evidence of the facts therein stated, and as conclusive evidence that the person named therein as owner is entitled to the land for the estate or interest therein specified.

Sec. 43. MEMORIAL CARRIED FORWARD:—Whenever a memorial has been entered, as permitted by this act, the registrar shall carry the same forward upon all certificates of title until the same is cancelled in some manner authorized by this act.

Sec. 44. DEALINGS WITH LAND AFTER REGISTRATION:—All dealings with land, or any estate or interest therein, after the same has been brought under this act, and all liens, incumbrances, and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this act, and to such amendments and alterations as may hereafter be made. The

bringing of land under this act shall imply an agreement which shall run with the land, that the same shall be subject to the terms and provisions of this act and of the amendments and alterations thereof.

Sec. 45. TIME LIMITATION FOR ADVERSE ACTIONS:—No person shall commence any action at law or in equity for the recovery of land, or assert any interest or right in, or lien or demand upon the same, or make entry thereon adversely to the title or interest certified in the first certificate bringing the land under the operation of this act after one year following the first registration.

(*a*) It shall not be an exception to this rule that the person entitled to bring the action or make the entry is deceased, an infant, lunatic, or is under any disability, but action may be brought by such person by his next friend or guardian or by the administrator or the executor of a deceased person.

(*b*) It shall be the duty of the guardian, if there is any, to bring action in the name of his ward whenever it is necessary to preserve or enforce the ward's rights in registered land; provided, however, before such action shall proceed, it must be made to appear to the court that the person bringing such action or those under whom he claims, had no actual notice of the proceedings to register such lands in time to appear and file his objections or assert his claim.

(c) The provisions of this section shall in no way effect or disturb the rights of any person in said land, acquired subsequent to the registration thereof, bona fide and without knowledge and for a valuable consideration.

REGISTRATION IN PROBATE PROCEEDINGS

Sec. 46. In all estates of deceased persons the administrator or executor may file a petition to the court in the probate proceedings, praying for the registration of all land belonging to the estate in fee simple, setting forth the facts required to be set forth by sections 5 and 6 of this act together with a description of all the land of which the deceased died seized which is sought to be registered.[80]

(*a*) The court, by reason of its general jurisdiction shall, in probate, have power and jurisdiction to do any and all things necessary to determine the title to the land and to all adverse interests therein to the same extent as said court has in independent proceedings under this act. (*b*) Upon the filing of such petition the court must direct notice of the filing of said petition to issue as provided by this act[80] and the administrator or executor shall publish and serve such notice upon all persons required by this act to be served and in the manner herein specified.

(*c*) Every decree of final or partial distribution of land sought

to be registered, wherein upon the hearing of such petition, after said notice has been given, the court shall find the title to such land to be such as to entitle it to be registered under this act, may direct all such land to be registered in the name of the distributee or distributees in fee simple,[80] which decree shall be authority to the registrar of the county in which any such land is situated to register the same and issue his certificate of registration to such distributee or distributees. (*d*) If any land sought to be registered in any proceeding under this act lies in any county other than the county in which said estate is being administered, a certified copy of said petition shall forthwith be filed with the registrar of every county in which any of such land may be situated and such copy, when filed, shall be notice of such application to all persons dealing with said land.

The petition required by this section will be in form as in Application THREE of the general petition.

The order that notice be given as in entry No. 11.

The notice as in No. 15, with proper modifications. The publication and service of this notice will be the same as prescribed in Sec. 12.

For the decree of registration, modify the general decree No. 22.

Sec. 47. NOTATIONS ON INSTRUMENTS FILED:—Any instrument offered for filing with the registrar of any county, seeking to affect registered land, must have noted thereon a statement of the fact that the land sought to be affected is registered land, with the name of the registered owner and with the number or numbers of the certificate or certificates of the last registration thereof. [47.] Otherwise none of such instruments shall be filed, nor shall the same affect the title of the or any part of the land sought to be affected, nor will the same impart any notice thereof to the registered owner or to any person dealing with such land.

[80]See Sec. 17, and remarks under it, on Registration in other proceedings.

47. (Sec. 47.) *Notations on back of deed transferring registered land.*

DEED.

File No.....

.....

TO

.....

Residence and post office address:[81]

.....

Dated.....

The land transferred by this instrument is registered land.

Name of the last registered owner.....

Number of the last certificate.....

Filed.....19....., at ..... O'C.....Min.....M.[82]

NEW CERTIFICATE No.....[83]

.....

Registrar.

Sec. 48. TRANSFER OF REGISTERED LAND—NEW CERTIFICATE:—A registered owner of land desiring to transfer his whole estate or interest therein, or some distinct part or parcel thereof, or some undivided interest therein, or to grant out of his estate an estate for life, may execute to the intended transferee a deed or instrument of conveyance in any form authorized by law for that purpose.[84] And upon filing such deed or other instrument in the registrar's office, and surrendering to the registrar the duplicate certificate of title, the transfer shall be complete and the title so transferred shall vest in the transferee; (*a*) thereupon, the registrar shall issue in duplicate and register, as hereinbefore provided, a new certificate,[85] certifying the title to the estate or in-

[81]See Secs. 48 and 53 as to forms of instruments, and Sec. 54 requiring the full name, residence and post-office address of the grantee, and the notation of any change of address.

[82]See Sec. 50.

[83]Notations on back of a mortgage or other instrument will be similar. Instead of this, let the notation be, by Sec. 60:

"ENTERED ON CERTIFICATE NO....."

[84]See Secs. 47, 53 and 54 and notes under them setting forth further requirements for instruments of conveyance of registered land. For notations to be made on the instruments see No. 47.

[85]The opponents of the Torrens system have centered their arguments against this provision for the issuance of a certificate subsequent to the first one, claiming that while the first certificate has the direct authority of the court, the subsequent ones depend on the decision of the registrar, in passing upon the character of the instrument of transfer, upon which the certificate is based, thus bestowing on him judicial powers. On this point the Supreme Court of Illinois in the case of People vs. Simon, 176 Ill. 165, said: "But it is insisted that the law is still vulnerable in that it vests judicial power in the registrar in the performance of his duties as to subsequent registration." After quoting a number of authorities, the court continued:

terest in the land desired to be conveyed to be in the transferee, and shall note upon the original and duplicate certificates the date of the transfer, the name of the transferee, and the volume and folium in which the new certificate is registered, [48] and shall stamp across the original and surrendered duplicate certificate the word "Canceled," in whole or in part, as the case may be.[86]

48. (Sec. 48.) *Memorial on certificate cancelled by transfer*

This certificate is cancelled by reason of transfer of the (*or,* part of the) land, by deed, File No. ....., dated ..... 19....., to ..... New certificate entered in Reg. Vol. ....., Fol. ..... Transferred this ..... day of ..... 19.....

.....

Registrar.

Similar endorsements will be made on transfer by Executor, Sec. 74; and of a tax deed by Sec. 81.

Sec. 49. TRANSFER OF PART:—When only a part of the land described in a certificate is transferred, a new certificate shall be issued to the grantee for the part transferred to him and another one shall be issued to the grantor for the part remaining in him; (*a*) provided, however, that if the land consists of a tract divided into subdivisions designated by numbers or letters on a plat of said subdivision, filed with the recorder, duly verified as required by law, on which plat so filed the measurements of all boundaries

---

"From these authorities it is apparent that the mere fact that the registrar is required by the act to inquire into the existence of certain facts and to apply the law thereto in order to determine what his official conduct shall be, and that his action may affect private rights, does not constitute the exercise of judicial powers, strictly speaking.

"Particular stress, however, is laid by counsel for appellant upon the contention that the duties of the registrar as to the subsequent registration of land held in trust, upon condition, or limitation, are the exercise of judicial powers in violation of the terms of the constitution. * * * * These do not differ materially from those already examined."

The objections were overruled.

The Supreme court of our own State has set this question at rest so far as California is concerned, by holding that "There is no force in this objection," as will be seen by reference to the decision in Robinson vs. Kerrigan, page 10 ante.

As a safeguard against any error on the part of the registrar in respect to the character of an instrument, it is provided by Sec. 99 that any deed, mortgage or other voluntary instrument presented for registration may be submitted to the court by the registrar, or by any party in interest, and the court, after hearing if necessary, shall determine the form of the memorial to be entered. All of these provisions make it very improbable that harm will ever be done under this provision in practical use.

[86]Sec. 55 appears to require also that the word "Transferred" be stamped or written on them.

of each subdivision appear, the registrar may, upon request of the grantor, make a new certificate to the grantee of one or more of such subdivisions and instead of issuing a new certificate for the remainder to the grantor, may enter upon the original certificate and upon the owner's duplicate, a memorandum of such transfer, in red ink, setting forth the fact that the particular subdivision, describing it by numbers or letters as the same is described in said plat, has been granted and that such certificate is cancelled as to such subdivision. [49.] Every certificate with such memorandum endorsed thereon shall be as effectual for the purpose of showing the grantor's title to the remainder of the land not conveyed as if the certificate had been cancelled and a new one for the remainder issued; such process may be repeated as long as there is convenient space upon the original certificate and the owner's duplicate thereof for making such memoranda of transfers of subdivisions.

49. (Sec. 49.) *Endorsement on certificate of subdivided tract, when lot sold.*[87]

Lot No. ....., on the plat of subdivision of the tract described herein as recorded in Book ....., Page ....., in the office of the Recorder of this County, has been transferred to ..... and a new certificate therefor entered in Vol. ....., Folium ....., and this certificate is, on the owner's request, cancelled as to said lot this.....day of....., 19.....

.....

Registrar.

Sec. 50. DATE OF FILING MARKED ON INSTRUMENTS:—The registrar shall mark as filed every deed, mortgage, lease, and other instrument which may be filed in his office, in the order of its receipt, and shall note thereon at the date of filing the minute, hour, day, and year it is received.[88] When the date of filing any instrument is required to be entered upon the register, it shall be the same as that indorsed upon such instrument.

Sec. 51. INSTRUMENTS RETAINED IN REGISTRAR'S OFFICE:—All instruments, notices, and papers required or permitted by this act to be filed in the office of the registrar, shall be retained and kept in such office, and shall not be taken therefrom except by a subpoena *duces tecum* issued to and served upon the registrar by a court of record. But the registrar, on demand, the proper fee being tendered therefor, shall deliver to any person a copy or copies of such an instrument, with all memoranda, memorials, and indodsements thereon, duly certified under his hand and seal of office. The registrar shall, however, upon all such copies,

[87]Must be in red ink.

[88]See notations on instrument, No. 47.

indorse thereon in writing across the face thereof, in red ink, "copy, no rights conveyed hereby."

Sec. 52. CERTIFIED COPIES:—Every copy of original instruments so certified as provided for in the last preceding section, shall be received in all cases in place of the original, and as evidence have the same force and effect as the original instrument.

Sec. 53. FORMS OF INSTRUMENTS:—Like forms of deeds, mortgages, leases, and other instruments as are now or may hereafter be sufficient in law for the purpose intended, may be used in dealing with registered land and any estate or interest therein. Such instrument shall give the number of the certificate of title of the land described therein.[89]

(*a*) But an indorsement duly acknowledged, upon the duplicate certificate of title,[90] substantially in the following form, viz.: "I, ....., grant to ..... the real property described in this certificate. Witness ..... hand ..... and seal ..... this ..... day of ....., ....." shall be sufficient to transfer the property in said certificate described.

Sec. 54. NAME, ETC., OF GRANTEE: CHANGE OF ADDRESS:—Every deed or other voluntary instrument which is presented for registration including the endorsement of a certificate of title, shall contain or have endorsed upon it the full name, residence and postoffice address of the grantee or other person who acquires or claims an interest under such instrument.[91]

(*a*) Any change in the residence or post office address of such person shall be endorsed by the registrar upon the original instrument, upon receiving a written statement of such change, duly acknowledged [50.] Notices and processes issued in relation to registered land after original registration, may be served upon any person in interest by mailing them to the address so given, and shall be binding, whether he resides within or without the state. The certificate of the clerk that he has served such notice [51.] shall be conclusive proof of such service; but the court may,

---

[89]See Sec. 47, requiring statement that the land is registered land, and the name of the registered owner with the number of the certificate of last registration, to be noted on the instrument. Also Sec. 54 requiring the name, residence and post-office address of the grantee to be endorsed on the instrument, and any change of address to be noted.

[90]By Sec. 54 this endorsement shall contain or have endorsed upon it the full name, residence and post-office address of the grantee and any change must be noted, as in the case of other forms of transfer.

[91]See Sec. 47, requiring a statement that the land is registered land, the name of the registered owner and the number of the certificate of last registration to be noted on the instrument. And form of notation, No. 47. See also Secs. 48 and 53, as to form of instruments that may be used.

in any case, order different or further service, by publication or otherwise. [52.]

50. (Sec. 54.) *Notice of change of address.*

To the Registrar of ..... County, California:

You are hereby notified that the address of the undersigned has been changed from ..... as endorsed on the deed to him, registered by certificate No. ....., Vol. ....., to .....

L. W.
Owner.

*Must be duly acknowledged before a proper officer.*

51. (Sec. 54.) *Certificate of service of notice and process.* (*Attach to notice or process served.*)

In the Superior Court of the State of California, in and for the County of .....

I hereby certify that I received the within notice on the ..... day of ....., 19....., and served the same on the ..... day of ....., 19....., on ....., the person therein named, by mailing a copy thereof to him, postage prepaid, to the address endorsed on the last instrument of conveyance to him as grantee, as shown in Certificate of title No. .....; to-wit, (*Give address*).

Given under my hand and the seal of said Court, this ..... day of ....., 19.....

H. J. L.,
(SEAL) County Clerk

52. (Sec. 54.) *Order for different or further notice.*

(*Title.*)

It appearing to the Court that the notice given in this case (*Specify*) is not sufficient to properly notify the parties for whom it was intended, (*or, make any other statement*). It is now on motion of ..... ordered that further notice be given to ..... (*Specify as to kind of service and publication.*)

Sec. 55. INSTRUMENTS TO TAKE EFFECT AS CONTRACTS:—A deed, mortgage, lease or other instrument purporting to convey, transfer, mortgage, lease, charge, or otherwise deal with registered land, or any estate or interest therein, or charge upon the same, other than a will or a lease not exceeding one year where the land is in the actual possession of the lessee or his assigns, shall take effect only by way of contract between the parties thereto, and authority to the registrar to register the transfer, mortgage, lease, charge, or other dealing upon compliance with the terms of this act. On the filing of such instrument, the land, estate, interest, or charge shall become transferred, mortgaged, leased, charged,

or dealt with according to the purport and terms of the deed, mortgage, lease, or other instrument.[92]

(*a*) The registrar shall immediately, upon the filing of such instrument, stamp or write upon the original and duplicate certificates of title the word "Transferred," "Mortgaged," "Leased," or otherwise, as the case may require, with the date of filing such instrument and sign such endorsement.[93]

Sec. 56. WHEN TRANSFER IS SUBJECT TO TAX SALE:—No transfer of title to land or any estate or interest therein shall be registered if the last original certificate shows that the land in such certificate described, or any part thereof, has been sold for any tax or assessment, unless such transfer is intended to be subject to such tax sale, in which case it shall be so stated in the certificate issued upon such transfer[94] and no transfer of any homestead which has not been heretofore released or extinguished of record shall be made unless both spouses join therein.

Sec. 57. COMMUNITY PROPERTY:—Community property registered under this act as such cannot be transferred, mortgaged, encumbered or otherwise disposed of by the registered owner thereof without the written consent of both spouses.

Sec. 58. AFFIDAVIT OF TRANSFEREE:—The transferee shall furnish the registrar with an affidavit [53, 54.] stating whether the transferee (except when the latter is a corporation, executor, administrator, or assignee) is married or not married, and if married, the name of the husband or wife, and whether or not the property is community property, and the fact shall be recorded on the certificate of title by the registrar before the transfer is made on the register. (*a*) If the transferee be an executor or administrator [54] the certificate shall give the name of the de-

---

[92]Under the provisions of the Torrens Act in the State of Washington, that no instrument shall take effect or bind the land, operating only as a contract between the parties until it is registered, *Held*, the act of registration is expressly made the operating act to convey or affect the land. The first mortgage registered takes precedence over one of a prior date, not registered. Brace vs. Superior Land Co., 65 Wash. 681.

[93]If the instrument filed is a deed, Sec. 48 provides that upon its being filed a new certificate shall be issued and the registrar shall stamp across the surrendered certificates the word "Cancelled" in whole or in part.

This section, 55, seems also to require the word "transferred" to be written or stamped on them. For memorial see No. 48.

In case the instrument is a mortgage, lease or other than a deed, Sec. 60 provides that all such shall be entered as memorials on the last certificate. For this form, see under Sec. 23.

[94]For entry on certificate, see note 76, under Sec. 23.

ceased testator or intestate, (*b*) and if the transferee be an assignee or trustee, the name of the insolvent or bankrupt.

53. (Sec. 58.) *Affidavit of transferee.*

State of California, }
County of..... } *ss.*

L. W., being first duly sworn, says that he is the transferee in the foregoing deed (*or,* in a certain deed filed with the registrar of said County, dated ....., 19....., transferring land registered in certificate of title No. .....); that he is married and the name of his wife is ..... (*or,* that he is not married); and the land conveyed by said deed is (*or,* is not) community property.

L. W.

*Subscribed and sworn to, etc.*

54. (Sec. 58.) *Affidavit by Executor, etc., transferee.*

State of California, }
County of..... } *ss.*

L. W., being first duly sworn, says that he is the legally appointed ..... of ..... and as such ..... is the transferee in the foregoing deed (*or,* in a certain deed, etc.) and that the land conveyed by such deed is (*or, is* not) community property.

L. W.,
As ..... of .....

*Subscribed and sworn to, etc.*

MORTGAGES, ETC., ON REGISTERED LAND.

Sec. 59. BECOME CHARGES UPON REGISTRATION:—Every mortgage, lease, contract to sell, or other instrument intended to create a lien, incumbrance, or charge upon registered land, or any interest therein, shall be a charge thereon immediately upon registration thereof.

Sec. 60. MEMORIAL OF PURPORT OF INSTRUMENT—NEW CERTIFICATE OR MEMORIAL BINDING ON ALL:—On the filing of an instrument intended to create a charge in the registrar's office and upon the production of the duplicate certificate of title, whenever it appears from the original certificate of title that the person intending to create the charge has the title and right to create such charge and the person in whose favor the same is sought to be created is entitled by the terms of this act to have the same registered, the register shall enter upon the original and duplicate certificates a memorial of the purport thereof, and the date of filing the instrument,[95] with a reference thereto by its file number, which

[95]By Sec. 50 the date of filing must be the same as endorsed on the instrument.

See Sec. 55 and note as to stamping certificate.

memorial shall be signed by the registrar. The registrar shall also note upon the instrument on file the number of the certificate of title where the memorial is entered.

(*a*) No new certificate of title shall be entered and no memorandum shall be made upon any certificate of title by the registrar in pursuance of any deed or other voluntary instrument, unless the owner's duplicate certificate of title is presented with such instrument, except in cases expressly provided for in this act, or upon the order of the court, for cause shown, [56.] and whenever such order is made, a memorial thereof shall be entered upon the new certificate of title and on the owner's duplicate. The production of the owner's duplicate certificate, whenever a voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar to issue a new certificate or to make a memorial in accordance with such instrument and the new certificate or the memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value in good faith.

If the mortgage or other charge is assigned, enter on the certificate, Memorial No. 57 — or 57a under Sec. 63.

56. (Sec. 60.) *Order allowing memorandum to be made without duplicate certificate.*

[*Title.*]

Now comes.....and represents to the Court that he desires to file in this case (*name instrument*) but that he has not in his possession the duplicate certificate of title, and the court finding that there is good cause therefor, and that no harm will be done thereby, it is now on motion of said..... ordered that the said.....be filed and received by the registrar and entered on the register of this case, No....., together with a memorial of this order. And the said..... is directed to produce his duplicate certificate.....for entry thereon.

A similar order may be made for cause shown for a new certificate.

Sec. 61. INSTRUMENTS FILED IN DUPLICATE:—When any mortgage, lease, or other instrument creating or dealing with a charge upon registered land, or any estate or interest therein, is in duplicate, triplicate, or more parts, only one of the parts need be filed and kept in the registrar's office; but the registrar shall note upon the register whether the same is in duplicate, triplicate, or as the case may be, and shall also mark upon the others "mortgagee's duplicate," "lessor's duplicate," lessee's duplicate," or as the case

may be, and note upon the same the date of filing and the volume and folium of the register where the memorial is entered, and deliver them to the parties entitled thereto.

Sec. 62. CERTIFIED COPIES OF INSTRUMENTS:—When an instrument is not executed in a sufficient number of parts for the convenience of the parties, the registrar may make and deliver to each of the parties entitled thereto certified copies of the instrument filed in his office, with the indorsements thereon, marking the same "mortgagee's certified copy," "lessor's certified copy," or as the case may be, and shall note upon the register the fact of issuing such copies. Such certified copies shall have the same force and effect and be treated as duplicates.

Sec. 63. ASSIGNMENT OF A CHARGE:—The holder of any upon registered land, desiring to transfer the same or any part thereof, may execute an assignment of the whole or any part thereof. The assignment of a part only must state whether the part transferred is to be given priority, to be deferred, or to rank equally, with the remaining part. Upon such assignment being filed in the office of the registrar, and the production of the duplicate or certified copy of the instrument creating the charge held by the assignor, the registrar shall enter in the register opposite the charge a memorial of such transfer [57] and how it ranks, with a reference to the assignment by its file number; [57a] he shall also note upon the instrument on file in his office intended to be transferred, and upon the duplicate or certified copy thereof produced, the valume and folium where the memorial is entered, with the date of the entry. (*a*) The transferee shall be entitled to have a certified copy of the instrument of transfer with the indorsement thereon, and in case of the transfer of the entire charge, the duplicate or certified copy of the instrument creating the charge.

57. (Sec. 63.) *Memorial of assignment of charge.*

By an assignment, File No....., dated.....
filed this.....day of....., 19....., the mortgage
from.....to.....File No....., has
been transferred to..... (*Signed by registrar.*)

57a. (Sec. 63.) *Memorial of assignment of part of charge.*

By an assignment, File No....., dated.....filed
this.....day of....., 19....., an undivided
interest in the mortgage from.....to.....
File No....., has been transferred to.....,
and the part transferred is given priority over (*or,* is deferred to, *or,* ranks equally with) the remaining interest in said mortgage.
(*Signed by registrar.*)

Sec. 64. RELEASE OF A CHARGE:—A release, discharge, or sur-

render of a charge, or any part thereof, or of any part of the land charged, may be effected in the same way as above provided in the case of a transfer. Incase only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made accordingly; but when the whole is released, discharged, or surrendered at the same or several times, the registrar shall stamp across the instrument on file, and the memorial therof, and the duplicate or certified copy produced, the word "canceled."

57b. (Sec. 64.) *Memorial of release of whole or part of charge.*

By an instrument of release dated.....filed this.....day of....., 19....., File No....., the.....from.....to..... being File No....., is released in full. (*Or,* is released to the amount of.....) (*Signed by registrar.*)

Sec. 65. CHARGES ENFORCED AS IN OTHER CASES:—All charges upon registered land, or any estate or interest in the same, may be enforced as now or hereafter allowed by law, and all laws with reference to the foreclosure and release or satisfaction of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that until notice [58] of the pendency of any suit to enforce or foreclose such charge is filed in the registrar's office, and a memorial therof entered on the register, the pendency of such suit shall not be notice to the registrar, or any person dealing with the land.

58. (Sec. 65.) *Notice of pendency of suit to foreclose or enforce charge.*

Notice is hereby given that on the.....day of....., 19....., a suit was begun in the Superior court of this county, by.....against....., case No....., to enforce (*or,* foreclose) the....., File No....., entered as memorial No.....on certificate No.....in the registrar's office. And the registrar and all persons dealing with the property on which such.....is a charge shall take notice thereof. (*Signed.*)

Sec. 66. POWER OF ATTORNEY:—Before any person can convey, charge, or otherwise deal with registered land, or any estate or interest therein, as attorney in fact for another, the deed or instrument empowering him so to act shall be filed with the registrar, and a memorial thereof entered upon the original duplicate certificates. If the attorney shall so desire, the registrar shall deliver to him a certified copy of the power of attorney, with the indorsements thereon. Revocation of a power may be registered in like manner.

DEEDS IN TRUST

Sec. 67. HOW NOTED IN CERTIFICATE:—Whenever a deed or other instrument is filed in the registrar's office for the purpose of effecting a transfer of, or charge upon, registered lands, or any estate or interest therein, and it appears from such instrument that the transfer or charge is to be in trust, or upon any condition or limitation therein expressed, the registrar shall note in the certificate, and the duplicate thereof, or memorial, the words "in trust," or "upon condition," or "with limitations," as the case may be, but no entry need be made of the particulars of any such trust, condition, or limitation.[96]

Sec. 68. TRUSTEE WITHOUT POWER OF SALE:—The trustee or transferee in any such instrument named, if the instrument contains the words "with power of sale," shall have power to deal with the land as the owner thereof; and a bona fide purchaser, mortgagee, or leseee is not bound to inquire into or determine whether or not the acts of such trustee are in accordance with the terms and conditions of the trust. When such power is conferred, the registrar shall note upon the certificate and duplicate thereof the words "with power of sale."[96]

Sec. 69. TRUSTEE WITHOUT POWER OF SALE:—If, however, such instrument does not contain the words "with power of sale," such trustee shall have no power to sell or otherwise deal with the land without an order of court so to do, duly given and made, a certified copy of which said order shall be filed with the registrar, and a memorial therof entered upon the certificate of title, which shall be conclusive evidence as against all persons that the authority of such trustee was duly exercised in accordance with the true intent and meaning of the trust, condition, or limitation.

Sec. 70. TRUSTEE UNDER WILL:—A trustee under any will admitted to probate unless such power shall have been expressly withheld by the terms of such will, shall have power to deal with any registered land held by him in trust as fully in every respect as if such lands belonged to him individually.

DISTRIBUTION, ETC., OF REGISTERED LAND IN OTHER PROCEEDINGS—

Sec. 71. MADE AS IN OTHER CASES:—The distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land that is within the jurisdiction of any court by reason of the pendency of probate, insolvency, or equity proceedings, shall be made under the same conditions and limitations as now or hereafter provided by the law of this state.

[96]See note 75, under Sec. 23.

Sec. 72. ORDER FOR CERTIFICATE OR MEMORIAL:—The court in its order or decree making such distribution, transfer, leasing, mortgaging, or other change in the status of the title of registered land shall direct the registrar to issue a certificate of title, or to note a memorial of the transaction, as the case may require, in accordance with such order or decree. [59.]

The decrees called for by sections 69, 71, 72 and 74 are under the general laws of the state and therefore forms are not given here, but only the addenda to the decrees.

59. (Sec. 72.) *Order in decree for transfer, etc., that certificate issue, or memorial be made.*

*Add to such decree, or to decree of confirmation;*—And it is ordered that upon a certified copy of this decree, and the deed (*or other instrument*) made thereunder, being filed with the registrar, he shall issue a new certificate of title to..... (*or,* note a memorial on the certificate of title) in accordance with this decree.

Sec. 73. CERTIFIED COPY OF DECREE, ETC., FILED WITH REGISTRAR:—The executor, administrator, assignee, receiver, or other person acting under the direction of said court, shall file with the registrar a certified copy of such order or decree, also the deed, lease, mortgage, or other instrument executed in accordance with such order or decree, and also a certified copy of the order or decree confirming such sale, lease, mortgage, or other transaction, when such confirmation is required by law.

Sec. 74. SALES BY EXECUTORS, ETC., CONFIRMED:—Executors, administrators, trustees in bankruptcy, and assignees in insolvency shall have no power of sale of lands registered in their names as such, without an order of court obtained for that purpose. (*a*) Before any certificate can be issued to the purchaser, such sales shall be reported for confirmation to the court under whose authority such executor, administrator, or assigne is acting, and if confirmed a duly certified copy of the order of confirmation shall be filed in the office of the registrar, and a memorial thereof entered upon the certificate of title. Upon the filing of the certified copy of such order of confirmation and the entry of such memorial, the registrar shall issue a certificate to the purchaser at such sale [60.] which certificate, in addition to the usual contents thereof, shall refer to the said order of confirmation. Such order of confirmation shall be conclusive evidence that the sale was in all respects conducted in accordance with law, and the purchaser shall not be bound to inquire into the regularity of the proceeding, or power to make such sale.

60. (Sec. 74.) *Order for certificate when sale made by executor is confirmed.*

*Add to the decree of confirmation as follows;*—And it is ordered that upon a certified copy of this decree and the deed made thereunder being filed with the registrar he make a memorial thereof upon the certificate of title and issue a new certificate to.....the purchaser of the land, in accordance with, and which certificate shall refer to, this decree of confirmation.

Sec. 75. WHEN EXECUTOR GIVEN POWER OF SALE BY WILL:—If a testator, by his will, has provided that the executor thereof shall have a power of sale of real estate, the court shall direct the registrar to register the words "with power of sale," in respect of the land of the deceased, [61] and such executor shall have power to sell such land without an order of court so to do, but such sales must be confirmed by the court in the manner now or hereafter provided by the law of this state, and a duly certified copy of the order of such confirmation shall be filed with the registrar before any certificate of title can be issued to the purchaser of such land. [62.]

61. (Sec. 75.) *Order that words "with power of sale" be registered.*

[*Title.*]

It appearing to the court, from inspection of the will of F. C., that said testator has therein provided that the executor E. S. shall have a power of sale of the real estate therein devised, and registered in certificate of title No. ....., it is hereby directed that the registrar enter upon the register and duplicate certificate the words "with power of sale" in respect to the land of the deceased.

62. (Sec. 75). *Order in decree confirming sale made by executor for certificate.*

*Use form of Entry No. 59.*

Sec. 76. CERTIFICATE OF MEMORIAL CONCLUSIVE EVIDENCE:—Thereupon the registrar shall issue the certificate of title, or note the memorial, as the case may require; and such certificate of title or memorial noted shall be conclusive evidence in favor of all persons thereafter depending thereon.

TAX SALE OF REGISTERED LAND—

Sec. 77. NOTICE BY PURCHASER:—A purchaser of registered land sold for any tax or assessment[97] shall, within five days after

[97]The general statutes of California governing tax sales are set forth under Sec. 8 ante, and they govern both registered and unregistered land. By reference to these statutes it will be apparent that the purchaser referred to in the first part of this section must be one who purchases from the State after the five years allowed for redemption

such purchase, file in the office of the registrar a written notice of such purchase, [63] And thereupon the registrar shall enter a memorial thereof upon the certificate of title, and shall mail to each person named in the certificate, and in the memorials thereon, a copy of said notice, a sufficient number of said copies to be furnished to the registrar by said purchaser at the time of filing said notice. (*a*) In case the state or a municipal corporation becomes the purchaser of land sold for any tax or assessment, the tax collector or other officer attending to such purchase shall, within five days thereafter, file with the registrar a notice to that effect. [64] And thereupon the registrar shall enter a memorial thereof upon the register, and shall mail notices to interested parties, as in the case of an individual purchaser. Unless such notice is filed as herein provided, the land shall be forever released from the effect of such sale, and no deed shall be issued in pursuance thereof.

---

has expired and the title has become absolute in the State. Still, notwithstanding this, he must give notice, and go through all the formalities required by this and subsequent sections, before he can acquire a title to the land. All of this is certainly not for the benefit of the "tax shark" as claimed by some opponents of the law.

The case of the State, in the second part of the above section must refer to its being declared the purchaser at the tax sale as provided in sections 3767 and 3771 P. C. The provision here made is also for the protection of the original owner.

The steps required for purchaser to obtain a certificate of title to registered land sold for nonpayment of taxes are as follows:

By Sec. 77:

1. Within five days a written notice filed in the office of the registrar.

2. Memorial thereof entered on the certificate of title.

3. Registrar must mail a copy of the notice to each person named in the certificate and in the memorials.

4. The tax deed issued to purchaser.

Sec. 78:

5. The tax deed presented to the registrar.

6. Memorial thereof made by registrar.

7. Application for a decree filed by holder of deed with the clerk.

Sec. 79:

8. Order of Court that notice of application be given.

9. The notice, sent to all persons appearing on the register to be interested in the lands and to the person who paid the last tax or assessment.

Sec. 80:

10. Application set for hearing and heard by the Court wherein the applicant must show affirmatively that all the requirements of the statute have been complied with.

11. Decree of the Court, showing him to be the owner, and ordering a certificate to be issued.

12. The certificate of title issued to purchaser.

63. (Sec. 77.) *Notice of purchase of registered land sold for taxes.*

In the matter of registered land sold for non-payment of taxes.

To all whom it may concern:—

Notice is hereby given that the undersigned did on the..... day of....., 19....., purchase from the State of California the land hereinafter described, registered in certificate of title No.....and sold by the state for non-payment of taxes; and that the undersigned has applied (*or,* will apply), to the Superior court of said county for a decree showing the title of said land to be vested in him. Which said land is described as follows: (*describe.*)

Dated this.....day of....., 19.....

L. E. W.

64. (Sec. 77.) *Notice that registered land has been sold to state.*

To all whom it may concern:

Notice is hereby given that on the.....day of..... 19....., the following registered land was declared sold to the State of California, for delinquent taxes, to-wit: Land registered in certificate of title No. ....., described as follows: (*describe.*)

Given this.....day of..... 19.....

.....

Collector of Taxes.

Sec. 78. TAX DEED FILED—APPLICATION FOR DECREE:—A tax deed of registered land, or of any estate or interest therein, issued in pursuance of any sale for a tax or assessment made after the taking effect of this act, may be presented by the holder thereof to the registrar, who shall thereupon enter upon the register a memorial of such deed; but such deed, unless the same shall have been issued to the state, shall have only the effect of an agreement for the transfer of the title, and before any certificate of title shall be issued for the land described in such deed, the holder thereof must file with the clerk of the Superior court an application for a decree showing the title to said land to be vested in him. [65.]

Shall the application for the decree provided for in the above section be filed in the original case for registration, or under a new number and proceeding? The latter would appear to be the best practice, as it might be filed long after the original

case had been closed, and as this application is treated, and notice of it served and decree entered in the same manner, as in case of the original petition for registration. In this view make the application as follows:

65. (Sec. 78.) *Application by tax purchaser for decree.*

In the Superior court of California, in and for the county of.....

T. P.
vs.
*(Name all persons appearing on the register to be interested in the land, and the person who last paid taxes.)*

No.....

Application for decree.

The applicant, T. P., now comes and represents to the court that at a sale of land for delinquent taxes, held in said county of.....on the.....day of....., 19....., the land hereinafter described was duly declared sold, and was sold to the State of California; that the person who appears by the tax collector's books to have paid the tax last paid before said sale is H. W.; that afterwards, on the.....day of....., 19....., the applicant herein purchased said land from the State of California and received a deed, duly executed therefor.

He further states that within five days after the said purchase he duly filed a notice thereof in the office of the registrar of said county, and that the registrar entered a memorial thereof on the certificate of title in his office and sent a copy of said notice to each of the defendants, being the persons named in said certificate of title and the memorials thereon, as required by law, and to said H. W.

Applicant states that all the proceedings in such tax sale and in the sale to him have been regular and according to law, and that thereby the title to said land became vested in him in fee simple.

The said land is registered in certificate of title No..... and is described as follows: (*Describe.*)

Wherefore the applicant prays the court for a decree showing the title of said land to be vested in him, and directing the registrar to issue to him a certificate of title therefor; and for such other relief as shall be according to law and equity.

(*Usual verification.*)

Sec. 79. To WHOM NOTICE SENT:—All persons appearing upon the register to be interested in said land, and also the person who appears by the tax collector's books to have paid the tax or assessment last paid before the sale on which the deed is issued,

shall be notified; [67] and any person claiming an interest in the land may, upon the hearing of such application, show, as cause why a certificate of title should not issue to the holder of said deed, any fact that might be shown in law or in equity on his behalf to set aside such tax deed, and the applicant shall be required to show affirmatively that all the requirements of the statute to entitle him to a deed have been complied with.

This notice must, by section 82, be served in the manner provided for service of notice of application for original registration. But it would not seem that an order of court for the notice as required by Sec. 11 is needed in this case, except that the court designate the newspaper in which publication is to be made; but a form for the order is here given, to be used if deemed necessary.

66. *Order that notice be given of tax purchaser's application for decree.*

[*Title.*]

T. P. having filed with the clerk of this court an application for a decree showing the title of certain registered land sold by the State for non-payment of taxes and purchased by him as described in his deed, to be vested in him, and the court finding that said tax deed has been filed with the registrar, as required by law; it is now ordered that notice be given of the filing of the application herein as provided in the act for registration of land titles. The notice attached hereto is approved, and it is ordered that it be published in the ....., a newspaper of general circulation published in this county, once a week for four successive weeks, and service made as provided by the act aforesaid.

67. (Sec. 79.) *Notice of application for decree.*

In the Superior court of California, in and for the county of.....

[*Title as in No. 65.*]

The State of California to the above named defendants and to all whom it may concern:

You are hereby notified that the applicant above named did on the.....day of.....19....., file in the office of the county clerk of said county an application for a decree of the court, showing the title of certain land purchased by him at tax sale, registered in certificate No..... to be vested in him. Which said land is described as follows: (*describe.*)

You are hereby directed to appear and answer such application within ten days after personal service of this notice upon you, if served within this county, or thirty days after personal service out of the county and within this state, or within sixty days after the first publication of this notice, if it has not been

personally served upon you in this state. And if you fail to appear and show cause why such application should not be granted, the court will grant the same.

Witness: the Hon. L. R. W., Judge.

Given under my hand and seal of said court, this.....day of.....19.....

[SEAL.]

H. J. L.
County Clerk.

First publication.....19.....

Sec. 80. DECREE AND CERTIFICATE ON HEARING:—Such application shall be heard by the court, which shall render a decree [68] showing the condition of the title to such land, and who is the owner thereof, and upon presentation to him, of a duly certified copy of such decree, the registrar shall issue a certificate for said land in accordance with the terms and conditions of said decree.

68. (Sec. 80.) *Decree showing title vested in holder of tax deed.*

[*Title, as in No. 65.*]

After due notice to all parties in interest of the hearing of this case, it came on to be heard this.....day of.....19....., upon the application of T. P. for a decree showing the title of the land in the application described, to be vested in him by tax deed, and upon the exhibits and testimony; and upon full consideration thereof the court finds: (*make finding of service and pleadings, as in decree No. 22, ante.*)

2. The court coming now to determine the title to the land finds that the allegations of the applicant, T. P., are true; that all of the proceedings in the sale of the land as described were regular and in strict accordance with the statutes in such case provided, and with the orders of this court; that all acts required by law to be done in such cases by the registraar were properly performed and that the tax deed to the said T. P. was properly made and executed, and that all other acts in regard thereto have been properly performed.

It is therefore found and adjudged and decreed that the said T. P. is the owner in fee simple of said land, and his title thereto is hereby established and confirmed. Said land is described as follows: (*describe.*)

It is further ordered that the registrar issue to him a certificate of title as provided by law.

(*Make any other findings required, as in Decree No. 22.*)

Sec. 81. WHEN STATE OR MUNICIPALITY IS PURCHASER:—In case a tax deed of registered land is issued to the state or any municipal corporation, in pursuance of any sale for a tax assessment made after the taking effect of this act, the registrar shall, upon

the filing of such deed in his office, cancel the certificate for the land in said deed described[98] and issue a new certificate to the purchaser.

Sec. 82. How notice required in Sec. 79 served:—The notice required by Section 79 shall be served upon persons interested in the manner provided in this act for the service of notice of application for original registrations. Proof of such service and publication must be made in the manner now or hereafter required by the laws of this State.[98a]

Sec. 83. *Redemption from tax sale:*—Upon presentation to him of a certificate of redemption from any tax sale, the registrar shall cancel the memorial of said sale upon the certificate of title.

Partition of Registered Land—(*See also Sec. 104.*)

Sec. 84. Proof as to parties:—In proceedings for partition of registered land, proof must be made that all persons, shown by the register of title to be interested in the land, have been made parties to such proceedings.

Sec. 85. Lands allotted by commissioners:—On confirmation of the report of the commissioners setting off registered lands in proceedings for partition, it shall be the duty of the parties to whom the lands are allotted, to cause a certified copy of the judgment or decree to be filed with the registrar.[99] Thereupon the registrar shall transfer the same upon the register, and issue certificate of title to the persons entitled thereto, as shown by said decree.

Sec. 86. Land sold in partition proceedings:—Whenever, in proceedings for partition of registered land, the court shall order a sale of such land and the same is sold under such order, the purchaser shall file with the registrar a certified copy of the order confirming said sale,[99] together with certificate of the officer making the sale [69] that the terms of the sale have been complied with. Thereupon, the registrar shall transfer said land upon the register, and issue a certificate of title to the purchaser therefor.

[98]For memorial to be entered on cancelled certificate see Form No. 48.

[98a]See Sec. 12 and notes under that section.

[99]An order for the registrar to issue a new certificate should be added to the decree of confirmation as an assurance to the registrar, and because a certificate under the direct order of the court carries more weight with some persons. Entry No. 59 or 60 may be modified to suit each case.

69. (Sec. 86.) *Certificate of officer making sale.*
[*Title.*]

I,..... do hereby certify that on the.....
day of.....19....., I made a sale, as ordered by the court, in the above named proceedings in partition, of the land registered in certificate of title No.....; and that the terms of sale were in all respects complied with and all the proceedings of sale regular and according to law.

Given under my hand this.....day of.....19.....

.....

Sec. 87. LIEN ON UNDIVIDED INTEREST, ATTACHES TO WHAT:—When a tenant in common has given any mortgage, or granted any other lien or interest upon his undivided interest, and the same is set off in severalty in proceedings in partition, such mortgage, lien, or other interest shall attach only to the lands so set off, and the registrar shall note the same upon a new register of title, and a new certificate of title, and shall indorse a memorandum of the partition upon the instrument creating such lien, mortgage, or other interest, if the same be on file in his office, before a new certificate of title shall be issued therefor.

Sec. 88. SALE OF REGISTERED LAND TO SATISFY JUDGMENT:—Whenever registered land shall be sold to satisfy any judgment, decree, or order of court, the purchaser shall file with the registrar a duly certified copy of the order of sale, or of the order confirming such sale, when the same needs to be confirmed by the court, and also the certificate, if any, of the officer, that the terms of sale have been complied with, and thereupon the registrar shall transfer the land to him, and issue a new certificate of title therefor to said purchaser.[100]

Sec. 89. LIS PENDENS:—No suit, bill, or proceeding at law or in equity for any purpose whatever, affecting registered land, or any estate, or interest therein, or any charge upon the same, shall be deemed to be lis pendens or notice to any person dealing with the same until notice of the pendency of such suit, bill, or proceeding[101] shall be filed with the registrar and a memorial thereof entered by him upon the register of the last certificate of the title to be affected; provided, however, this section shall not apply to attachment proceedings when the officer making the levy shall file his certificate as hereinafter provided.

Sec. 90. WHEN SUIT, ETC., DISMISSED, OR DISPOSED OF:—When any suit, bill, or proceeding affecting registered lands has been

[100]See note under Secs. 85 and 86.
[101]Make notice in form of No. 58.

dismissed or otherwise disposed of, or any judgment, decree, or order has been satisfied, released, reversed, or modified, or any levy of execution, attachment, or other process has been released, discharged, or otherwise disposed of, it shall be the duty of the sheriff, or the clerk of the court in which such proceedings were pending, or had, as the case may be, forthwith, under his hand, and, if the clerk, under the seal of the court[102] to certify to and file with the registrar, an instrument showing such discharge or release. Upon the same being filed, the registrar shall enter a memorial of such discharge on the register. The costs of such certificate and memorial shall be taxed as other costs in the case.

LIENS ON REGISTERED LAND—

Sec. 91. WHEN JUDGMENT BECOMES A LIEN:—No judgment, or decree, or order of any court shall be a lien on or in any wise affect registered land, or any estate or interest therein, until a certified copy of such judgment, decree, or order, under the hand and official seal of the clerk of the court in which the same is of record, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected.

Sec. 92. LEVY ON REGISTERED LAND: CERTIFIED TO REGISTRAR:—Whenever registered land is levied upon by virtue of any writ of attachment, execution, or other process, it shall be the duty of the officer making such levy forthwith to file with the registrar a certificate of the fact of such levy, ]70] a memorial of which shall be entered upon the register; and no lien shall arise by reason of such levy until the filing of such certificate and the entry in the register of such memorial, any notice thereof, actual or constructive, to the contrary notwithstanding.

70. (Sec. 92.) *Certificate of levy.*

Sheriff's Office,
County of.....
State of California.
To the Registrar of.....County:

I hereby certify that the land registered in certificate No..... (*or, describe the land*) was on the.....day of..... levied on by virtue of a writ of.....issued in case No..... in (*name court.*)

Given under my hand, etc.

.....
Sheriff of.....County.

[102]See Sec. 96, practically the same as this section, and forms under that section.

Sec. 93. MECHANIC'S LIEN:—Notice of liens under the provisions of the mechanic's lien laws of this state shall be filed in the registrar's office, and a memorial thereof entered by him upon the register, as in the case of other charges, and such liens may be enforced as now or hereafter allowed by law. Until such notice is so filed and registered, no lien shall be deemed to have been created.

Sec. 94. ORDINANCE FOR PUBLIC IMPROVEMENT:—When in a city, town, or county, an ordinance, resolution, or order is passed or made, to lay out, establish, alter, widen, grade, regrade, relocate, or construct or repair a street, sidewalk, drain, or sewer, or to make any other public improvement, or to do any work, the whole or a portion of the expense for which assessments may be made upon real estate, if any registered land or any land included in an application for registration then pending is affected by the act or proceeding and liable to such assessment, the clerk of the board passing such ordinance, resolution, or order must, within five days after the passage of such ordinance, resolution, or order, file in the registrar's office a notice of the passage thereof, [71] and a memorial must thereupon be noted on the register. (*a*) In case of the repeal of such ordinance, [72] resolution, or order, the clerk of said board, and in case of the satisfaction of any lien [73] thereunder, the superintendent of streets or other officer required by law to collect and receive such assessments, must within five days thereafter, notify the registrar, in writing, who shall thereupon cancel such memorial.

71. (Sec. 94.) *Notice of ordinance to lay out or improve street, etc.*

To the registrar of.....county:

Notice is hereby given that on the.....day of....., 19....., an ordinance No....., was passed by the council of the .....of....., to establish (*or, otherwise affect*) .....street, for the expense of which an assessment may be made on registered land included in certificate of title No..... (*Or, describe the land.*)

Given this.....day of....., 19.....

.....

Clerk of.....

72. (Sec. 94.) *Notice of repeal of ordinance.*

To the Registrar of.....County:

Notice is hereby given that Ordinance No..... for the..... of.....street affecting land registered in certificate No..... (*or, describe land*) passed on the.....day of....., 19....., was repealed on the.....day of....., 19.....

Given this.....day of....., 19.....

.....

Clerk of.....

73. (Sec. 94.) *Notice that lien under ordinance is satisfied.*
To the Registrar of.....County:

Notice is hereby given that the lien on land registered in certificate of title No....., for the improvement of.....street in the city of.....was satisfied on the.....day of....., 19.....

Given this.....day of....., 19.....

.....
Collector.

Sec. 95. WHEN LIEN DEEMED TO AFFECT TITLE OF REGISTERED LAND:—No statutory or other lien shall be deemed to affect the title to registered land until after a memorial thereof is entered upon the register, as herein provided.

Sec. 96. CERTIFICATE OF DISMISSAL OF SUIT, ETC., TO BE FILED:—The filing in the registrar's office of a certificate of the clerk [74] of the court in which any suit, bill, or proceeding shall have been pending, or any judgment or decree is of record, that such suit, bill or proceeding has been dismissed or otherwise disposed of, or the judgment, decree, or order has been satisfied, released, reversed, or overruled, or of any sheriff ]75[ or other officer that the levy of any execution, attachment, or other process certified by him has been released, discharged, or otherwise disposed of, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such suit, bill, proceeding, judgment, decree, or levy, according to the purport of such certificate.

74. (Sec. 96.) *Certificate of clerk of suit dismissed or judgment satisfied.*

Clerk's office.
County of.....
State of California.
To the registrar of.....county:

I hereby certify that suit (*or,* that judgment in suit) No..... in the Superior court of.....county, California, affecting land registered in certificate of title No.....(*or, describe the land,*) was dismissed (*or,* satisfied) on the.....day of....., 19.....

Given under my hand and the seal of the court this.....day of....., 19.....

[SEAL.] .....
Clerk.

75. (Sec. 96.) *Certificate of sheriff of release of levy, etc.*

Sheriff's Office,
County of.....
State of California.

To the registrar of.....county.

I hereby certify that the levy of execution under judgment in case No.....of the Superior court of this county, heretofore certified by me, affecting land registered in certificate of title No....., (*or, describe the land,*) was released on the..... day of....., 19.....

Given under my hand this.....day of....., 19.....

.....

Sheriff.

ALTERATIONS, ETC., OF CERTIFICATE OR MEMORANDUM.

Sec. 97. After a title has been registered and a certificate issued therefor, or after a memorandum, notation, or memorial has been made on the register of title and has been attested, no correction, alteration, or erasure shall be made therein or thereof, except in the manner herein provided.

Sec. 98. APPLICATION FOR ORDER CORRECTING, ETC.:—A registered owner or other person in interest or the registrar, may at any time apply by petition [76] to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant or inchoate, have terminated and ceased; (*a*) or that new interests have arisen or been created which do not appear upon the certificates; (*b*) or that there is an error or omission in any certificate or memorial; (*c*) or that any certificate or memorial has been made, entered, indorsed, issued, or canceled by mistake; (*d*) or that the name of any person on the certificate has been changed by divorce, adoption, or other than by marriage as provided for in section 28 of this act; (*e*) or that an owner, registered as married, has ceased to be such; (*f*) or that a corporation which owned registered land has been dissolved and has not legally conveyed the same after its dissolution; (*g*) or upon any other reasonable ground;, (*h*) for an order correcting or altering any certificate to comply with the true facts as shown by the petition and proof adduced and the court shall have jurisdiction to hear and determine the petition after notice to all parties in interest. (*i*) The court shall issue an order [77] summoning all persons registered as interested in the lands to which such certificate or memorial relates, to appear at an appointed time and place and produce their duplicate certificates and show cause why such omission, or mistake, or change, or alteration, should not be corrected or made. (*j*) The registrar shall, upon receiving notice of such petition, enter a memorial of such application upon the certificate of title affected. (*k*) If at the time and place appointed all such persons appear and consent, the court may order the entry of a new certificate, the the entry or cancellation of a memorandum upon a certificate, or

grant any other relief upon such terms, requiring security if necessary, as it may consider proper. [79] If such persons, or any of them, fail to appear or do not consent, the court may proceed to hear testimony and if it appears to the satisfaction of the court that the relief as petitioned for should be granted, it shall order and direct the registrar to make such corrections or modifications on such certificates or memorials as may be necessary. [80] (*m*) A certified copy of such order of the court shall be filed in the registrar's office before any such corrections or modifications shall be entered or made. (*n*) When such action has been caused by the fault or neglect of the registrar, the costs of such proceedings shall be paid by the county out of the fees collected by the registrar under the provisions of this act that go into the county treasury; if by the fault of the person registered as interested in such land, by such person. (*o*) The provisions of this section shall not give the court authority to open the original decree of registration and nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser who holds a certificate for value and in good faith, or his heirs or assigns without his or their written consent.

Sec. 28 provides for change of name in a certificate, on application. More formality is required in making corrections, alterations and erasures under this section. The petition here provided for, it would appear, may be filed in the original proceedings for registration, or as a separate action.

76. (Sec. 98.) *Petition, by registered owner, for correction or alteration of certificate.*

[*Title.*]

The pettioner, A. B., now comes and represents to the court that he is the owner of certificate of title No.....to land described as follows: (*describe*); and states that (*here set forth any of the conditions provided for in this section, and the true facts.*)

The petitioner therefore prays the court for an order correcting (*or,* altering) his said certificate in the particulars here set forth to make it comply with the facts as above stated, and for such other relief, etc.

(*Usual verification.*)

77. (Sec. 98.) *Order that summons issue.*

[*Title.*]

On consideration of the petition herein, it is ordered that all persons named as defendants in the petition, registered as interested in the lands in said petition described, be summoned to appear (*name time and place,*) and produce their duplicate certifi-

cates and show cause why the correction (*or,* alteration) petitioned for should not be made.

78. *Form of summons.*

In the Superior court of the State of California, in and for the County of.....

[*Title.*]

You, and each of you, are hereby directed to appear at (*name place*), on the.....day of....., 19....., at..... o'clock.....M., and answer the petition of A. B., filed herein for the correction (*or,* alteration) of his certificate of title No....., relating to the following described land to-wit: (*describe*). And you are directed to there produce your duplicate certificates and show cause why the correction (*or,* alteration) asked for should not be made.

Given under my hand and the seal of said court, this..... day of....., 19.....

H. J. L.,
Clerk.

79. (Sec. 98.) *Order for correction, by consent.*

[*Title.*]

Now came A. B., by his attorney, this.....day of....., 19....., and thereupon this cause came on to be heard on his petition for correction (*or, alteration*), of his certificate of title and the proof adduced in support thereof. And upon consideration of the premises the court finds that all the persons registered in this case as interested in the lands to which such certificate relates, have appeared in person, or by answer filed herein, and have consented to the correction (*or,* alteration), prayed for; and the court finding that the petition is made upon reasonable grounds, it is therefore ordered* that correction (*or,* alteration) of said certificate No..... be made as follows: (*state form*); and the registrar is ordered and directed to issue a new certificate (*or,* make a memorandum on the certificate) in accordance with this order upon a certified copy hereof being filed with him and on payment of the costs hereof.

80. (Sec. 98.) *Order for correction on hearing.*

[*Title.*]

Now came A. B., the petitioner herein, by his counsel, J. M., this.....day of....., 19....., and thereupon this case came on to be heard on his petition for correction (*or,* alteration) of his certificate of title and the proofs adduced in support thereof, and on the answer filed herein of E. F. objecting to such correction, and upon the testimony offered; and thereupon the court finds that all of the persons registered as interested in the lands to which the certificate relates, have been duly served with summons as heretofore ordered by the court,

and that all of said persons are in default for failing to appear or answer, except as shown in the pleadings here named; and as to all so in default it is adjudged that the allegations of the petition be taken as confessed and true.

And upon full consideration of the premises the court finds that the petition is made upon reasonable grounds and that the relief petitioned for should be granted. It is therefore ordered (*Conclude as from * in last entry.*)

Sec. 99. FORM OF MEMORIAL REFERRED TO COURT:—When the registrar is in doubt or when the parties in interest fail to agree as to the proper memorial to be made in respect to any deed, mortgage or other voluntary instrument presented for registration, the question shall be referred to the court for decision, either on the certificate of the registrar, [81] stating the question, or upon the suggestion in writing of any party or parties in interest; [82] and the court after due notice to all parties in interest and a hearing, if necessary or proper, shall enter an order prescribing the form of the memorial to be made by the registrar, who shall make the memorial accordingly. [83.]

81. (Sec. 99.) *Form of memorial referred to court on registrar's certificate.*

[*Title.*]

A certain....., which is herewith submitted to the court, having been presented to me for registration, and being in doubt as to the proper memorial to be made in respect thereto, the question is hereby referred to the court for decision, and I certify the question to be as follows: (*state fully.*)

.....

Registrar.

82. (Sec. 99.) *Same, on suggestion of party.*

[*Title.*]

N. R. now comes and represents to the court that he is one of the parties in interest in this case, and states that the parties herein can not agree as to the form of the proper memorial to be made by the registrar in respect to a certain deed (*or, other instrument*) presented for registration, and herewith shown to the court, and suggests that the question be referred to the court for decision. The question agreed upon by the parties to be submitted is as follows: (*State fully.*)

(*Signed by the parties.*)

83. (Sec. 99.) *Order prescribing form of memorial.*

[*Title.*]

It appearing that the registrar is in doubt (*or,* that the parties herein fail to agree) as to the proper memorial to be made in respect to (*any voluntary instrument*) presented for registra-

tion in this case, and the question having been referred to the court on the certificate of the registrar (*or,* upon the suggestion in writing of N. R. and agreement of the parties in interest) the court after due notice to all interested parties and full consideration, hereby prescribes the following form of the memorial to be made, which the registrar is directed to make accordingly, to-wit: (*Set forth form for memorial or prescribe new certificate.*)

Sec. 100. FEES UNDER THIS ACT:—For services performed under the provisions of this act, there shall be paid to the registrar the following fees:

Subdivision 1. For filing decree directing land to be brought under the operation of this act, including original registration and issuing original certificate of title and duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar. (*a*) For each subsequent registration and issuing of certificate of title, including one duplicate and the filing of all instruments connected therewith, for each separate parcel of land affected, one dollar. (*b*) For filing certified copy of any petition filed in the Superior court of another county in probate proceedings or any notice of any action in another county wherein registration of land is asked for, one dollar. (*c*) For the entry of each memorial on the register, including the filing of all instruments and papers connected therewith and the endorsement upon the duplicate certificate, for each separate parcel of land affected, fifty cents. (*d*) For filing copy of will with letters testamentary or filing copy of letters of administration with or without will annexed and entering memorial thereof, one dollar. (*e*) For the cancellation of each memorial or charge, appearing on one certificate, twenty-five cents. (*f*) For each certificate showing the condition of the title to all land appearing on one certificate, three dollars. (*g*) For filing any instrument or furnishing a certified copy of any instrument or writing on file not herein specially provided for, the same fees which are allowed by law to recorders for like services.

Subdivision 2. In addition to the fees provided in subdivision 1, for services performed by the registrar there shall be paid to him the following fees: Upon the original registration of any land, a sum equivalent to one-tenth of one per cent of the assessed value of the land including permanent improvements thereon as the same were valued for county taxation the last time said land and permanent improvements or either thereof were assessed for county taxes next preceding the filing of the petition.

Subdivision 3. All the fees collected by the registrar under the provisions of subdivision 1 of this section shall be accounted

for, paid, disbursed and disposed of by him in the manner that fees collected by him as county recorder are now or may hereafter be by law accounted for, paid, disbursed and disposed of. (*a*) All fees collected under the provisions of subdivision 2 of this section shall be paid by the registrar, between the first and fifth days of the month following receipt thereof, to the treasurer of the state, to be by him accumulated as and for an assurance fund. (*b*) Should there be a surplus in any year derived from fees hereunder other than those provided to be paid to the state treasurer for an assurance fund, such surplus shall be carried into the general fund and be subject to appropriation for any purpose. In case such fees shall not amount to the sum required for theadministration of this act, the deficiency shall be paid from any funds in the county treasury, not otherwise appropriated. (*c*) All books, blanks, papers and other things necessary, including clerks for the purpose of carrying out the provisions of this act, shall be furnished by the board of supervisors at the expense of the county.

Sec. 101. RIGHT OF EMINENT DOMAIN NOT AFFECTED:—Nothing in this act shall be construed to in any wise affect or modify the exercise of the right of eminent domain. When any suit or proceeding shall have been brought in the exercise of such right for the taking of registered land, or any interest therein, or to test the validity of any such taking, or to ascertain and establish the amount of damage by reason of any such taking, it shall be the duty of both parties to the proceedings to see that a certified copy of the judgment or decree therein is duly filed and a memorial thereof entered upon the register; (*a*) but in the case of an assessment of damages, no such memorial shall be entered by the registrar until such damages have been paid, in which event the register shall also show the payment of such damages; provided, however, that the deposit with the treasurer, as allowed by law, of such damages, shall be deemed a payment thereof, and in such case the treasurer shall forthwith file with the registrar a certificate of such deposit, and thereupon a memorial thereof shall be entered upon the register. (*b*) Upon the filing of the certified copy of the order or decree of the court and the payment of damages, the registrar shall note on the register of title of the owners whose lands have been appropriated, and shall register in the name of the person, corporation, or other body entitled thereto, the title of the land taken, and issue a certificate therefor.

Sec. 102. PROPERTY INDICES:—The registrar shall keep property indices, the pages of which shall be divided into columns, showing, first, the section or subdivision; second, the range of block; third, the township or lot; fourth, any further descrip-

tion necessary to identify the land; fifth, the name of the registered owner; sixth, the volume; and seventh, the page of the register in which the lands are registered.

Sec. 103. NAME INDICES:—He shall also keep name indices, the pages of which shall be divided into columns, showing in alphabetical order, first, the names of all registered owners and all other persons interested in or holding charges upon registered land; second, the nature of the interest; third, a brief description of the land; fourth, the volume; and fifth, the page of the register in which the lands are registered.

Sec. 104. PARTITION OF REGISTERED LAND:—(See Secs. 84, *et seq.*) An owner of an undivided interest in registered lands may bring an action for the partition thereof. A notice of such action shall, at the time of the commencement thereof, be filed with the registrar and a memorial entered by him upon the register. A certified copy of any judgment or decree rendered in pursuance of such action shall be filed with the registrar, who shall thereupon issue new certificates in accordance therewith.

TORRENS TITLE ASSURANCE FUND.[103]

Sec. 105. Subdivision 1. The state treasurer shall keep all sums paid to him by the registrars under the provisions hereof in a seprarate fund to be known as the "Torrens title assurance fund," and shall keep the same invested and reinvested in bonds of the United States or of the State of California or of any county or municipality thereof, the income derived from said investment to be, as the same is received, added to said fund. Said treasurer shall render to the governor, at least once in each fiscal year, a full and detailed report, showing all receipts, disbursements and investments on account of such fund.

Subdivision 2. Any person who, without fraud or negligence on his part, is deprived of any interest or estate in land through the operation of any provision of this act or by reason of the fraud, forgery, negligence, omissioin, mistake or misfeasance of any person, and who is precluded from recovering such interest or estate, may commence an action in the Superior court of the county in which the land or a part thereof is situated, to recover not over the fair market value of the interest or estate of which he has been deprived. If such deprivation has been caused solely by reason of any act of any registrar or deputy registrar in the performance of official duty as such, the state treasuerer, in his official capacity, shall be the sole defendant. If such deprivation has been caused either wholly or in part by any person or persons other than such registrar or deputy registrar, while acting in the official performance of duty as such, such person or

[103]See remarks as to the assurance fund, ante, page 18.

persons shall be joined as defendants with said state treasuerer. (*a*) In any such action said court shall have jurisdiction, after the service of summons, as provided in ordinary actions in said court, to determine the reason of such deprivation and to render judgment therein accordingly, either against said state treasuerr alone or against him and all or any of the other defendants. (*b*) In any action where there are defendants other than said state treasurer against whom judgment has been rendered, execution shall first issue against such other defendants and upon the return of such execution unsatisfied, either in whole or in part and upon it appearing to the satisfaction of the court that said execution cannot be satisfied out of the property belonging to such judgment creditors other than said state treasurer, or where judgment is had against said state treasurer alone, said court shall make its order directing the payment of the amount due out of the assurance fund, and such order shall constitute the warrant for the payment of the same, and the state controller shall thereupon audit and certify the amount of such claim in the same manner as other claims, against the state are audited, and the state treasurer shall thereupon pay the amount of said claim out of the assurance fund without any other act or resolve making an appropriation therefor. (*c*) If the assurance fund is at any time insufficient to pay the amount of any judgment in full, so much thereof as can be paid out of such fund shall be paid, and the unpaid balance shall bear interest at the legal rate and shall be paid out of the first moneys coming into such assurance fund. (*d*) The attorney-general shall defend the state treasurer in all actions brought under the provisions hereof. (*e*) If the person who is deprived of land or of any estate or interest therein in the manner above stated, has a right of action or other remedy for the recovery thereof, he shall exhaust such remedy before resorting to the action herein provided. (*f*) The provisions of this section shall not deprive the plaintiff of any action in tort which he may have against any person for loss or damage or deprivation of land, or any estate or interest therein, but if such plaintiff elects to pursue his remedy in tort and also brings an action under the provisions of this section, the action against said state treasurer shall be held in abeyance to await the final result of such action in tort. (*g*) In every case in which payment has been made by the state treasurer under the provisions of this section, the state shall be subrogated to all the rights of the plaintiff against any other parties or securities, and the state treasurer shall enforce the same in behalf of the state. Any amounts recovered by reason of such subrogation shall be paid into the state treasury to the account of the Terrens title assurance fund, after deducting therefrom the proper expenses in recovering the same.

Subdivision 3. The assurance fund shall not be liable to pay

for any loss, damage or deprivation occasioned solely by a breach of trust on the part of any registered owner who is trustee, or by the improper exercise of any power of sale in a mortgage, nor shall any plaintiff recover as compensation under the provisions of this act more than the fair market value of the land or of the estate or interest held by him at the time when he suffered the damage, loss or deprivation complained of. (*h*) Actions for compensation out of the assurance fund under the provisions of this act shall be commenced within four years from the time when the right of action accrued or they shall be forever barred; provided, that if at the time the right of action accrued, the person entitled to bring such action is a minor, or insane, or imprisoned, such person or any one claiming under him may commence such action within two years after the removal of such disability.

Sec. 106. IN CASE OF FRAUD:[104]—In the case of fraud, any person defrauded shall have all rights and remedies that he would have had if the lands were not under the provisions of this act; provided, that nothing contained in this section shall affect the title of a registered owner who has taken bona fide for a valuable consideration, or of any person bona fide claiming through or under him.

Sec. 107. APPEAL:—In case of an appeal from any proceeding under this act, or from any judgment, order, or decree affecting registered lands, the clerk of the court in which the notice of appeal is filed shall forthwith notify the registrar thereof, [84] and thereupon the registrar shall enter upon the register a memorial of such appeal.

84. (Sec. 107.) *Notice of appeal given to registrar.*

Clerk's office,
County of.....
State of California,

To the registrar of .....county:

You are hereby notified that on the.....day of....., 19....., there was filed in this office a notice of appeal from the decree of registration entered.....in registration proceedings case No.....

H. J. L.,
Clerk of Superior Court

Sec. 108. DEPUTY RECORDERS AND REGISTRARS:—The county recorders or registrars in the several counties shall have and they are hereby granted the power to appoint, whenever the business in their respective offices under this act shall, in their

[104]**This section is a duplicate of Sec. 37. See note under that section.**

opinion, justify the same, one or more deputies, each of whom shall be an attorney admitted to practice before the Supreme court of the State of California for at least five years prior to his appointment, in good standing, skilled in the examination of titles and in proceedings under this act. The compensation of such attorneys shall be such as may be agreed upon between them and the registrar subject to the approval of the board of supervisors of the county and shall be paid in the same manner that the salaries of other deputies are paid. Such attorneys, so appointed, shall be competent to act as referees when appointed by the court in proceedings under this act. It shall be the duty of said attorneys to assist the registrar in all matters in and arising out of proceedings under this act.

Sec. 109. SUBDIVIDING REGISTERED LAND:—The owner of registered land may plat the same and subdivide it into lots and blocks in like manner as in case of unregistered land. All laws with reference to the subdivision and platting of unregistered land shall apply with like force and effect to registered land. Owners of subdivisions transferring lots which are subject to building or other restrictions, may, at their own expense, furnish the registrar with printed forms of certificates of title for use by the registrar. Such printed forms must conform to the adopted size, quality of paper, workmanship and form and must first be submitted to the registrar for his approval; provided, however, the registrar shall have no authority over what restrictions shall be included.

Sec. 110. PERMANENCY OF DOCUMENTS:—It shall be the duty of the registrar to require that all documents offered for filing concerning registered land, shall be made out with a view to permanency. The registrar may refuse to accept any document for filing which in his judgment is wholly or partly written, made out or filled in with inferior ink or faded typewriter ribbon and likely to fade rapidly and may require such documents to be redrawn in India or indelible ink to insure permanency. (*a*) Registrars must in every instance in making out new certificates of title, memorials or entries of any kind in connection with registered land, use India ink for handwriting and indelible ink for typewriter or rubber stamp.

Sec. 111. FRAUD AND FORGERY, HOW PUNISHED:—Whoever fraudulently procures, assists in fraudulently procuring, or is privy to the fraudulent procurement of any certificates of title or other instrument, or of any entry in the register or other book kept in the registrar's office, or of any erasure or alteration in any entry in any said book, or in any instrument authorized by this act, or knowingly defrauds or is privy to defrauding any person by means of a false or farudulent instrument, certi-

ficate, statement, or affidaviit affecting registered lands, shall be guilty of a felony, and fined not exceeding five thousand dollars, or be imprisoned not exceeding five years nor less than one year, or either or both such fine and imprisonment.

Sec. 112. Whoever (1) forges, or procures to be forged, or assists in forging the seal of the registrar, or the same, signature, or handwriting of any officer of the registry office in cases where such officer is expressly or impliedly authorized to affix his signature; or (2) fraudulently stamps, or procures to be stamped, or assists in stamping any document with any forged seal of said registrar; or (3) forges, or procures to be forged, or assists in forging the name, signature, or handwriting of any person whomsoever to any instrument which is expressly or impliedly authorized to be signed by such person; or (4) uses any document upon which any impression, or part of the impression, of any seal of said registrar has been forged, knowing the same to have been forged, or any document the signature to which has been forged, knowing the same to have been forged; or (5) swears falsely concerning any matter of procedure made and done in pursuance of this act, shall be guilty of a felony and fined not exceeding five thousand dollars or be improsined not exceeding ten years nor less than one year, or either or both such fine and imprisonment.

Sec. 113. No proceeding or conviction for any act hereby declared to be a felony shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law or in equity, against the person who has committed such act, or against his estate, or against the registrar, or upon his bond.

Sec. 114. REGISTRARS' RULES:—Registrars shall not make any rules or regulations that work a hardship or inconvenience upon owners or others desiring to avail themselves of the provisions of this act, who live at a distance from the office of the registrar and shall in writing consent to accept notice of all proceedings, of which notice is required, by mail and in such cases registrars shall assist those who desire to use the mails in connection with registered lands in every way possible. Such documents as are sent by mail shall be entirely at the risk of the owner and if lost, the netire expense of replacing same shall be borne by the owner.

Sec. 115. ACT CONSTRUED LIBERALLY:—This act shall be construed liberally so far as may be necessary for the purpose of effecting its general intent.

# SURVEYS

It is provided by Sec. 6 of this act that a plat or plan of survey of the land made by the county or a licensed surveyor must accompany the application unless such land is part of a city, town or subdivision of which a map or plat, or an official map is on file in the office of the county recorder and upon such map the land appears in such manner that it can be identified thereon by reference.

Such survey must show the boundaries of the land and its relation to adjoining lands and streets, and any encroachments.

The court may in any case before decree require a survey to be made to determine the exact boundaries, or to determine the line of a public or private way by which the land is bounded.

DUTY OF SURVEYORS, UNDER THE CALIFORNIA STATUTES.

*General Laws of California, Chap. 451:*

Sec. 5. Every licensed surveyor shall have a seal of office, the impression of which must contain the name of the surveyor, his principal place of business, and the words, "licensed surveyor;" and all maps and papers signed by him, and to which said seal has been attached, shall be prima facie evidence in all the courts of this State.

Sec. 7. Every licensed surveyor is authorized to administer oaths, when it becomes necessary to take testimony to identify or establish old or lost courses; or if a corner or monument be found in a perishable condition and it appears desirable that evidence concerning such corner or monument be perpetuated; or whenever the importance of the (survey) makes it desirable, to administer an oath, for the faithful performance of duty to his assistants. A record of such oaths shall be preserved as part of the field notes of the survey.

Sec. 8. Every licensed surveyor is hereby authorized to make surveys relating to sale or subdivision of lands the retracing or establishing of property or boundary lines, public roads, streets, alleys, or trails; and it shall be the duty of each surveyor, whenever making any such surveys, except those relating to the retracing or subdivision of cemetery or town lots, whether the survey be made for private persons, corporations, cities or counties,

to set permanent and reliable monuments, and such monuments must be permanently marked with the initials of the surveyor setting them.

Sec. 9. Within sixty days after a survey relating to the sale or subdivision of lands, the retracing or establishing of property or boundary lines, public roads or trails, original cemetery or town sites, and their subdivisions, has been made by a licensed surveyor, he shall file with the recorder of the county in which such survey, or any part thereof, lies, a record of survey. Such record shall be made in a good draughtsmanlike manner, on one or more sheets of firm paper of the uniform size of 21 by 30 inches. This record of survey shall be either an original plat, or a copy thereof and must contain all the data necessary to enable any competent practical surveyor to retrace the survey. The record of survey must show:—

All permanent monuments set, describe their size, kind and location, with reference to the corners which they are intended to perpetuate;

All bearing or witness trees marked in the field;

Complete outlines of the several tracts or parcels of land surveyed within the courses and lengths of boundary lines;

The Angles, as measured by Vernier readings, which the lines of blocks or lots, if the record relate to an original town site survey, make with each other and with the center lines of adjacent streets, alleys, roads, or lanes;

The variation of the magnetic needle with which old lines have been retraced;

The scale of the map, the date of the survey;

A proper connection with one or more points of an original or larger tract of land, and the name of the same;

The name of the grant, or grants, or of the township and range within which the survey is located;

The signature and seal of the surveyor.

Provided that nothing in this section shall require record to be made of surveys of a preliminary nature, where no monuments or corners are established.

Sec. 10. The record of survey thus filed with the county recorder of any county must be by him pasted into a stub book provided for that purpose, and he must keep a proper index of such records, by name of owner, by name of surveyor, by name of grant, city or town and by United States subdivisions; and in all cases where such maps, plats, diagrams, or descriptions are filed by a state licensed land surveyor the county recorder shall make no charge for filing and indexing such records of surveys.

Sec. 11. * * * * A violation of section 9 of this act shall be a misdemeanor, and any person convicted of such violation shall

be punished by a fine not to exceed one hundred dollars, or imprisonment in the county jail not exceeding thirty days.

### General Requirements.

*In the office of the county surveyor of Los Angeles County.*

Nothing less substantial than a two inch pipe, with a tack and plug driven into the pipe will be considered as a permanent monument, and must be at least two and a half feet long, and driven two feet into the ground.

Maps, where property is offered for dedication for public purposes to the city of Los Angeles, or the county, must be accompanied by a blue print of the map, together with a certificate of title.

All roads offered to the county of Los Angeles for highway purposes must be forty feet or more in width.

The scale to which the map is drawn and a north point must be given on each sheet.

Total distance of exterior boundaries must be shown on maps.

*Form for Report of Survey.*

PLAT OF SURVEY.

By C. H. T., Being part of Rancho San Antonio (which is also part of the Rancho La Laguna), the property of Mrs. Arcadia Bandini de Baker.

In T. ..... N., R. ..... W., S. B. M., Los Angeles County, California.

(*Map.*)

(*With notes and descriptions as required by statute.*)

Scale .....

I,..... hereby certify that I am a licensed surveyor of the State of California, and that this map consisting of.....sheets, correctly represents a survey made under my supervision, (*date*), and that all monuments shown herein actually exist, and their positions are correctly shown.

Witness my hand and seal this ..... day of ..... 19.....

.....

(SEAL) Licensed Surveyor.

# TABLE OF CASES


| | Page |
|---|---|
| Arnold vs. Smith, 121 Minn. 117 | 72 |
| Baart vs. Martin, 99 Minn. 197 | 22, 53, 72 |
| B. and S. Co. vs. Hopkins, 96 Minn. 119 | 48 |
| Battelle vs. N. Y., N. H., and H. R. R. R., 211 Mass. 442 | 20 |
| Bjork vs. Glos, 256 Ill. 447 | 58 |
| Brace vs. Superior Land Co., 65 Wash 681 | 81 |
| Brooke vs. Glos, 243 Ill. 392 | 23 |
| Browning, Petitioner, Mass. Land Court, 5 | 20 |
| Carlson vs. Glos, 257 Ill. 149 | 58 |
| Cowan vs. Glos, 255 Ill. 377 | 21 |
| Crabbe vs. Hardy, 135 N. Y. S., 119 | 33, 35 |
| Dewey vs. Kimball, 89 Minn. 454 | 41 |
| Doyle vs. Wagner, 108 Minn. 442 | 53 |
| Duffy vs. Rodriguez, 124 N. Y. S. 529 | 22 |
| First Nat. Bank vs. City of Woburn, 192 Mass. 220 | 32 |
| Foss vs. Atkins, 204 Mass. 337 | 60, 61 |
| Gloss vs. Kingman, 207 Ill. 26 | 21 |
| Gloss vs. Mickow, 211 Ill. 117 | 32, 33 |
| Gloss vs. Bragdon, 229 Ill. 223 | 21, 31 |
| Gloss vs. Wheeler, 229 Ill. 272 | 33, 35 |
| Gloss vs. Cesna, 207 Ill. 69 | 21, 42, 49 |
| Gloss vs. Hoban, 212 Ill. 222 | 21, 58 |
| Gloss vs. Holberg, 220 Ill. 167 | 21, 33, 42, 49 |
| Gloss vs. Murphy, 225 Ill. 58 | 39, 49, 60 |
| Gage vs. Consumers E. L. Co., 194 Ill. 30 | 21, 33, 57 |
| Harper, Admin., vs. Rowe, 53 Calif. 233 | 35 |
| Hawes vs. U. S. Trans. Co., 127 N. Y. S. 632 | 44 |
| Henry vs. White, 123 Minn. 182 | 72 |
| Jackson vs. Gloss, 243 Ill. 280 | 23 |
| Keeney vs. Gloss, 258 Ill. 555 | 58 |
| Lachman vs. People, 127 N. Y. S. 910 | 40 |
| McMahon vs. Rowley, 238 Ill. 31 | 58, 60 |
| Mihalik vs. Gloss, 247 Ill. 597 | 23 |
| Mooney vs. Valentynnovics, 262 Ill. 355 | 31, 44, 49 |
| Mundt vs. Gloss, 231 Ill. 158 | 50 |
| Natl. Bond and Security Co. vs. Alderson, 99 Minn. 137 | 20, 48 |
| O'Laughlan vs. Covell, 222 Ill. 162 | 43, 58 |
| Partenfelder vs. People, 157 N. Y. 462 | 40 |
| People vs. Simon, 176 Ill. 165 | 76 |
| Peters vs. City of Duluth, 119 Minn. 96 | 20 |
| Peters vs. Dicus, 254 Ill. 379 | 33 |
| Pollard vs. Burchard, 199 Mass. 376 | 32 |
| Riley vs. Pearson, 120 Minn. 210 | 22 |
| Robinson vs. Kerrigan, 151 Cal. 42, full decision | 10, 77 |
| Robinson vs. Richards, 209 Mass 295 | 20 |
| Reed vs. Siddall, 94 Minn. 216 | 48 |
| Santa Barbara vs. S. & L. Soc., 137 Calif. 463 | 39 |
| State, ex rel. vs. Westfall, 85 Minn. 446 | 56 |
| Sunderman vs. People, 148 N. Y. 124 | 44 |
| The City and Sub. House Co. vs. People, 157 N. Y. 459 | 40 |
| Tobias vs. Kaspzyk, 247 Ill. 80 | 32, 33 |
| Tower vs. Gloss, 256 Ill. 121 | 43 |
| Tyler vs. Judges, 175 Mass. 71 | 23 |
| Waugh vs. Gloss, 246 Ill. 604 | 21 |
| Woods vs. Gloss, 257 Ill. 125 | 33 |

# INDEX


| | Section | Page |
|---|---|---|
| **Abstract of Title—** | | |
| when to accompany application | 6 | 16, 35 |
| required when adverse possession not proven | 6 | 36 |
| (6) Order for | | 37 |
| need not antedate decree determining title | 6 | 35 |
| title insurance policy may be starting point | 6 | 35 |
| how verified by searcher | 6 | 35 |
| who entitled to make, undertaking required | 6 | 36 |
| (7) Bond of person making, approved | | 37 |
| (8) Order for increase in amount of bond | | 37 |
| referred to Examiner of Titles. **See Examiner of Titles.** | | |
| (26) Order referring to examiner | | 56 |
| when returned to applicant | 20 | 61 |
| **Act—** | | |
| to be construed liberally | 115 | 109 |
| **Action—See Suit** | | |
| **Address—See Residence** | | |
| **Adjoining land—** | | |
| name and address of owner stated in petition | 5 | 23, 28 |
| owner of must assent or be served with notice. See **Assent.** | | |
| **Administrator—See Executor** | | |
| **Administration of estates—** | | |
| registration may be included in proceedings for | 17, 46 | 54, 74 |
| **Advantages of registration system** | | 5 |
| **Adverse possession—** | | |
| when alleged in the petition | 6 | 27, 32 |
| establishing title by, note | | 33 |
| defined by the code, note | | 34 |
| character of, must be stated in petition | 6 | 33 |
| how proven, note | | 35 |
| when not proven abstract required | 6 | 36 |
| (6) Order for abstract | | 37 |
| when required in registry of tax title | 8 | 38 |
| title to registered land not acquired by | 35 | 72 |
| **Affidavit—** | | |
| (17) Of service of notice, by other than sheriff | | 46 |
| (18) Of service by mail | | 46 |
| by transferee of registered land | 58 | 81 |
| (53) Affidavit | | 82 |
| (54) Affidavit by executor, etc., transferee | | 82 |
| **Agreement—** | | |
| what implied by registration | 44 | 74 |
| **Alteration of certificate—See Certificate of title** | | |
| **Amendment of application—See Application for registration** | | |
| **Appeal—** | | |
| from decree for registration | 15, 107 | 50, 107 |
| six months allowed for, note | | 50 |
| notice of, given to registrar | 107 | 107 |
| (84) Notice | | 107 |

| | Section | Page |
|---|---|---|
| **Appearance—** | | |
| time for, after service | 12 | 44 |
| **Applicant for registration—** | | |
| how described in petition | 5 | 21 |
| claiming title in severalty | 5 | 22 |
| must show title in himself, note | | 31 |
| on death or disability of, proceedings continued | 21 | 61 |
| (33) Representative made party | | 61 |
| on transfer of interest of | 21 | 61 |
| (34) Action continued for benefit of transferee | | 62 |
| (35) Transferee substituted | | 62 |
| **Application for registration—See also Petition** | | |
| how made by petition | 5 | 21 |
| when to be accompanied with map or plat | 6 | 31 |
| of tax title. See Tax title. | | |
| amendment of, how made | 9 | 39 |
| (9) Order for amended petition | | 39 |
| (10) Same on motion of applicant | | 39 |
| filing, notice of lis pendens | 10 | 40 |
| notice of filing, how given and served. See **Notice.** | | |
| persons claiming interest may object to | 12 | 43 |
| (19) Answer objecting to registration | | 46 |
| set down for hearing | 14 | 48 |
| may be withdrawn | 20 | 60 |
| (31) Request for withdrawal | | 61 |
| (32) Order allowing withdrawal | | 61 |
| **Arm of the sea—See Sea** | | |
| **Assent to registration—** | | |
| by adjoining property owners | 12 | 43, 31 |
| by person claiming interest | 12 | 44 |
| (20) Assent to registration | | 47 |
| may be attached to petition, note | | 30 |
| form of, attached to petition | | 30 |
| **Assessment—** | | |
| noted on certificate | 24 | 66 |
| sale for non-payment of. See **Tax sale.** | | |
| registered land held subject to what special | 34 | 71 |
| for public improvement, notice of | 94 | 97 |
| **Assignee in insolvency—** | | |
| certificate to, must show name of insolvent | 23 | 63 |
| same when transferee in deed | 58 | 82 |
| has no power of sale without order of court | 74 | 87 |
| sale made by, confirmed by the court | 74 | 87 |
| what the certificate to the purchaser shall contain | 74 | 87 |
| **Assurance fund—** | | |
| comment on | | 18 |
| how accumulated by the State Treasurer | 100 | 104 |
| shall be kept invested | 105 | 105 |
| not liable for payment of loss, when | 105, Sub. 3 | 107 |
| nor for more than fair market value | 105, Sub. 3 | 107 |
| time limit for actions for compensation | 105, Sub. 3 | 107 |
| payments out of, how audited and paid | 105, Sub. 2 | 106 |
| when not sufficient to pay claims | 105, Sub. 2 | 106 |
| other remedy must be exhausted | 105, Sub. 2 | 106 |
| when payment will be ordered out of | 105, Sub. 2 | 106 |
| when payment made, State subrogated | 105, Sub. 2 | 106 |

| | Section | Page |
|---|---|---|
| **Attachment—** | | |
| set forth in decree | 15 | 49 |
| when proceedings in, deemed lis pendens | 89 | 95 |
| disposal of to be certified to registrar | 90 | 96 |
| certificate by sheriff authority for registrar to cancel, etc. | 96 | 98 |
| levy not a lien until certified to registrar | 92 | 96 |
| **Attorney at law—** | | |
| qualifications for appointment as deputy registrar | 108 | 108 |
| **Attorney general—** | | |
| when notice of application shall be served on | 13 | 48 |
| shall defend the state treasurer in suit | 105 | 106 |
| **Attorney in fact—** | | |
| power of attorney filed with registrar | 66 | 85 |
| may have certified copy of the power of attorney | 66 | 85 |
| revocation of power of, registered | 66 | 85 |
| **Bill—See Suit** | | |
| **Bond, official—** | | |
| of recorders, applies to duties as registrars | 2 | 19 |
| to be given by title examiners | 6 | 36 |
| qualification and liability of sureties on | 6 | 36 |
| (7) Order approving bond | | 37 |
| (8) Order for increase in amount of | | 38 |
| **Books—** | | |
| land register docket to be kept by county clerk | 6 | 36 |
| showing to whom certificates are issued, kept by registrar | 22 | 62 |
| form of | | 62 |
| "Register of Titles" for entry of certificates | 29 | 70 |
| form of | | 64 |
| to be furnished by Board of Supervisors | 100 | 104 |
| **Boundaries—** | | |
| survey to determine may be ordered | 6 | 32 |
| (4) Order for survey | | 36 |
| **Certificate—** | | |
| of service to be attached to notice | 54 | 79 |
| (51) Certficate of service | | 80 |
| of officer making sale in partition, required | 86 | 94 |
| (69) Certificate of officer making sale | | 95 |
| of satisfaction of suit, etc., required | 90, 96 | 95, 98 |
| (74) Certificate of satisfaction | | 98 |
| of levy on registered land required | 92 | 96 |
| (70) Certificate of levy | | 96 |
| of release of levy, required | 90, 96 | 95, 98 |
| (75) Certificate of release of levy | | 98 |
| **Certificate of title—** | | |
| filed in all counties in which any part of land lies | 5 | 23 |
| issued by registrar, when | 15, 22 | 50, 62 |
| to whom issued and what to contain | 15, 23, 24 | 60-63, 65 |
| no particular form required | 24 | 65 |
| issuance to be recorded | 22 | 62 |
| made in duplicate, numbered, dated and sealed | 23 | 63 |
| original, what constitutes | 23 | 64 |
| entered in "register of titles" | 23, 29 | 63, 70 |
| form given | 24 | 65 |
| (36) Form | | 64 |

| | Section | Page |
|---|---|---|
| certified copy issued on loss of duplicate | 27 | 67 |
| (39) Application for | | 67 |
| (40) Order granting request, without notice | | 67 |
| (41) Notice of application ordered | | 68 |
| (42) Order granting request after hearing | | 68 |
| certified copy to be used as evidence | 27 | 67 |
| (43) Order for | | 68 |
| duplicate, a copy of the original | 23 | 63 |
| issued to owner of the land | 23 | 63 |
| receipt for, to be taken | 22, 30 | 62, 70 |
| witnessed or acknowledged | 30 | 70 |
| book showing to whom delivered | 22 | 62 |
| form for | | 62 |
| plat made on | | 65 |
| if lost. See **Loss of duplicate certificate.** | | |
| endorsement on, sufficient to transfer property | 53 | 79 |
| must be presented on the filing of instrument | 60 | 82 |
| except on order of Court | 60 | 82 |
| (56) Order allowing memorial, without duplicate | | 83 |
| how issued to tenants in common | 25 | 66 |
| several may be put in one, or one made several | 26 | 66 |
| memorial on. See **Memorials.** | | |
| alteration and correction of certificate or memorial: | | |
| if owner's name is incorrect or changed | 28 | 68 |
| (44) Application for change of name | | 68 |
| (45) Order granting—without notice | | 69 |
| (46) Order for correction, after hearing | | 69 |
| only made as here provided | 97 | 99 |
| applied for by petition | 98 | 99 |
| grounds for | 98 | 99 |
| (76) Petition | | 100 |
| (77) Order that summons issue | | 100 |
| (78) Summons | | 101 |
| (79) Order for correction by consent | | 101 |
| (80) Same, on hearing | | 101 |
| penalty for fraudulently making | 111 | 108 |
| new certificate issued to purchaser | 48 | 76 |
| court's ruling as to certificate after first, note | | 76 |
| notation made on old certificate | 48 | 77 |
| (48) Memorial | | 77 |
| when part only transferred | 49 | 77 |
| for lots in subdivision | 49 | 77 |
| (49) Endorsement on certificate of subdivided tract | | 78 |
| printed forms may be furnished for lots | 109 | 108 |
| transfers, mortgages and leases, how noted on | 55 | 80 |
| endorsement on, when transfer subject to tax sale | 56 | 81 |
| of affidavit of transferee | 58 | 81 |
| of instrument creating charge | 60 | 82 |
| when transfer is in trust | 67 | 86 |
| of tax deed. See **Tax Deed.** | | |
| order for, in decree entered in probate, insolvency or equity proceedings relating to registered land | 72 | 87 |
| (59) Order in decree for transfer, etc., that certificate issue or memorial be made | | 87 |
| exceptions in sec. 34 printed on | | 71 |
| conclusive evidence of valid title in what suits | 40, 41 | 73 |
| in favor of all persons depending on | 76 | 88 |
| in sales by executors, issued after confirmation | 74, 75, 76 | 87, 88 |
| (60) Order for certificate | | 88 |
| (62) Same | | 88 |

| | Section | Page |
|---|---|---|
| to be made with india and indelible ink | 110 | 108 |
| penalty for fraudulently procuring | 111 | 108 |
| **Certified copy—** | | |
| of decree filed with registrar | 15, 22 | 50, 62 |
| of certificate of title. See **Certificate of Title.** | | |
| of register received in evidence | 42 | 73 |
| of petition for registration. See **Petition for Registration.** | | |
| of instruments to be furnished by Registrar | 51 | 78 |
| recived as the original | 52 | 79 |
| issued and marked when not enough parts of instruments | 62 | 84 |
| have force and effect of duplicates | 62 | 84 |
| transferee of charge on land entitled to | 63 | 84 |
| of power of attorney issued to attorney | 66 | 85 |
| of decree, filed by executor | 73 | 87 |
| of report of commissioners in partition, filed | 85 | 94 |
| **Change of address—See Residence** | | |
| **Charge on land—** | | |
| shall not be registered, unless fee is first registered | 7 | 38 |
| shall be noted on certificate | 7, 15, 23, 24, 93 | 38, 50, 63, |
| set forth in decree | 15-49 | [65, 97 |
| referred to by book and page | 15 | 50 |
| title subject only to those noted, except | 7, 34, 39 | 38, 71, 73 |
| owner not affected by notice of unregistered | 36 | 72 |
| endorsement made when instrument creating filed | 60 | 82 |
| may be assigned in whole or in part | 63 | 84 |
| (57) Memorial of assignment | | 84 |
| if assigned in part, priorities must be stated | 63 | 84 |
| (57a) Memorial of assignment of part | | 84 |
| how release of effected | 64 | 85 |
| (57b) Memorial of release of charge | | 85 |
| enforced as in other cases | 65 | 85 |
| (58) Notice of pendency of suit to enforce | | 85 |
| **Chicago—** | | |
| Torrens system in | | 9 |
| **City, town or county—** | | |
| when land part of, in subdivision, how described in petition | 6 | 31 |
| public improvements made in, notices to be given | 94 | 97 |
| (71) Notice of ordinance | | 97 |
| (72) Notice of repeal of ordinance | | 97 |
| (73) Notice that lien for, satisfied | | 98 |
| **Claims—See Charge on land** | | |
| **Clerk of county—See County clerk** | | |
| **Clerk of court—See also County clerk** | | |
| application for decree by tax purchaser filed with | 78 | 90 |
| shall certify disposal of suit, etc., and satisfaction of judgment | | 90, 95 |
| shall certify judgment, etc., to registrar | 91 | 96 |
| his certificate authority for registrar to act | 96 | 98 |
| (74) Certificate of dismissal or satisfaction | | 98 |
| shall notify registrar of appeal | 107 | 107 |
| (84) Notice of appeal given registrar | | 107 |
| **Clerks—** | | |
| under this act furnished by board of supervisors | 100 | 104 |

| | Section | Page |
|---|---|---|
| **Commissioners in partition—** | | |
| when report setting off registered land confirmed, certificate will be issued | 85 | 94 |
| **Community property—** | | |
| defined by code, note | | 22 |
| petition must state whether or not | 5 | 22 |
| both spouses must join in application for registration | 5 | 23 |
| court will determine as to | 14 | 49 |
| found in decree | | 51 |
| certificate shall state as to | 15 | 50 |
| both spouses must join in disposal of registered | 57 | 81 |
| affidavit of transferee must state as to | 58 | 81 |
| **Compensation—** | | |
| of registrars and deputies | 1, 108 | 19, 107 |
| of examiners of titles | 18 | 56 |
| **Confirmation—** | | |
| of sales made by executors, etc., conclusive evidence of regularity of sale | 74 | 87 |
| of report of commissioners in partition | 85 | 94 |
| of sale in partition proceedings | 86 | 94 |
| **Consent to registration—See Assent** | | |
| **Contract—** | | |
| no unregistered shall prevail against title of registered owner | 39 | 73 |
| for purchase of real estate, certificate conclusive evidence in suit to enforce | 40 | 73 |
| for sale of land becomes charge upon registration | 59 | 82 |
| **Corporation—** | | |
| application for registration, how made | 5 | 21, 23, 29 |
| petition by, form | | 29 |
| for insuring titles must enter into undertaking | 6 | 36 |
| how to verify abstracts | 6 | 35 |
| dissolution of, ground for altering certificate | 98 | 99 |
| **Correction of certificate—See Certificate of Title** | | |
| **Cost—** | | |
| for examination of abstract, by whom paid | 18 | 56 |
| for making change in certificate, by whom paid | 98 | 100 |
| **County—** | | |
| shall pay expense of books, blanks, papers and clerks under this act | 100, Sub. 3 | 104 |
| **County clerk—See also Clerk of court** | | |
| petition for registration filed with | 5 | 21 |
| and by him endorsed and entered in the Land Registerr Docket | 6 | 36 |
| to return papers to applicant, when | 20 | 61 |
| certificate of service, conclusive proof | 54 | 79 |
| certificate of dismissal of suit by | 90 | 96 |
| **Court—** | | |
| petition for registration to Superior, of county | 5 | 21 |
| **Damages—** | | |
| for taking registered land paid before judgment will be registered | 101 | 104 |

| | Section | Page |
|---|---|---|
| **Date of Registration—** | | |
| shall be as of the date of filing of the petition | 15 | 50 |
| of deed, instrument or notice shall relate back to time of filing in the registrar's office | 32 | 70 |
| **Dealings—** | | |
| with land brought under this act deemed to be subject to its terms | 44 | 73 |
| **Death—** | | |
| of applicant, proceedings continued | 21 | 61 |
| (33) On death of, representative made party | | 61 |
| **Deceased Person—** | | |
| registration of estate of. See **Executor.** | | |
| **Decree—** | | |
| for registration. See **Registration.** | | |
| showing title under tax deed of registered land. See **Tax Deed.** | | |
| **Deed—See Instrument of transfer; Trust Deed** | | |
| **Defendant in registration—** | | |
| so named in act and caption | | 23 |
| **Deputy recorders—** | | |
| shall be deputy registrars | 1 | 19 |
| **Deputy registrars—** | | |
| who are, their duties, and laws governing | 1, 2, 3 | 19 |
| prohibited from practicing law | 4 | 19 |
| acting as searchers of titles | 4, 108 | 19, 108 |
| one or more may be appointed in each county | 108 | 107 |
| may act as referees, when appointed by court | 108 | 108 |
| qualification and compensation of | 108 | 108 |
| **Disability—** | | |
| nature of must be stated in petition | 5 | 22, 25, 26 |
| stated in the decree | 5 | 49 |
| stated in the certificate | 23 | 63, 64 |
| person under, guardian ad litem for | 13 | 48 |
| (21) Appointment of guardian ad litem | | 48 |
| decree shall state who acting for him, his authority | 15 | 49 |
| registration of deed made by, void | 38 | 73 |
| action for registration brought by guardian | 5 | 23, 28 |
| time limitation for adverse action by | 45 | 74 |
| action for, by whom brought | 45 | 74 |
| when suit for compensation out of assurance fund brought by | 105, Sub. 3 | 107 |
| **Discharge—See Charge on land** | | |
| **Divorce—** | | |
| change of name made by, changed in the certificate. See **Certificate of title.** | | |
| **Documents—** | | |
| for filing made with view to permanency | 110 | 108 |
| penalty for forging | 112 | 109 |
| sent by mail at the risk of the sender | 114 | 109 |
| **Drains—See Streets** | | |
| **Duplicate instruments—** | | |
| only one of the parts filed, notations on others | 61 | 83 |

| | Section | Page |
|---|---|---|
| **Duplicate certificate—See Certificate of title** | | |
| loss of. See **Loss of Duplicate Certificate.** | | |
| **Easement—** | | |
| ownership of not sufficient for registration | 5 | 21 |
| petition must state as to | 5 | 22 |
| set forth in decree | 15 | 49 |
| noted on certificate | 24 | 65,64 |
| when registered land subject to, though not noted on certificate | 34 | 71 |
| **Ejectment—** | | |
| in action for, the certificate conclusive evidence of valid title | 41 | 73 |
| **Eminent domain—** | | |
| right of not affected by this act | 101 | 104 |
| certified copy of judgment filed and registered | 111 | 104 |
| **Encroachments—** | | |
| on land land to be shown in report of survey | 6 | 32 |
| **Endorsement—** | | |
| upon duplicate certificate sufficient to transfer title, form | 53 | 79 |
| on instruments presented for filing with registrar | 47 | 75 |
| (47) Notations on back of instrument | | 76 |
| on deed or voluntary instrument offered for registration | 54 | 79 |
| includes endorsement on certificate of title | 54 | 79 |
| **Entry—** | | |
| penalty for fraudulently procuring | 111 | 108 |
| no person shall make, on land adversely to title after one year | 45 | 74 |
| **Equity proceedings—See Probate proceedings** | | |
| **Error in certificate—See Certificate of title** | | |
| **Establishing title—** | | |
| registration included in action for. See **Registration—** in other proceedings. | | |
| **Estate in lands—See Lands** | | |
| **Estates of deceased persons—See Executor** | | |
| **Evidence—** | | |
| certified copy of certificate to be used as | 27 | 67 |
| (43) Order for | | 68 |
| certificate of title conclusive in certain suits | 41, 41 | 73 |
| register and certified copy as | 42 | 73 |
| **Examiner of titles—** | | |
| registrars can not act as | 4 | 19 |
| court may appoint one or more and refer abstract to | 11, 18 | 40, 56 |
| shall be attorney in good standing, etc. | 18 | 56 |
| compensation of and by whom paid | 18 | 56 |
| (26) Order referring case to | | 56 |
| power of considered | | 56 |
| shall examine into title and report | 19 | 57 |
| report must be filed before decree can be entered | 19 | 57 |
| (28) Report of | | 58 |
| (29) Report approved | | 60 |
| (30) Report considered and further proof ordered | | 60 |

| | Section | Page |
|---|---|---|
| **Execution—** | | |
| levy certified to registrar | 92 | 96 |
| (70) Certificate of levy | | 96 |
| no lien arises until filing and entry of certificate | 92 | 96 |
| when levy disposed of, certified to registrar | 90, 96 | 96, 98 |
| (75) Certificate of sheriff of release of levy | | 98 |
| certificate of release authority for registrar to cancel | 96 | 98 |
| **Executor or administrator—** | | |
| registration of estate applied for by | 5 | 23, 29 |
| may apply for registration in probate proceedings | 17 | |
| See **Registration** in other proceedings. | | |
| what shall be shown in certificate issued to | 23 | 63 |
| action for recovery of estate of deceased brought by | 45 | 74 |
| may file petition for registration, in Probate proceedings | 46 | 74 |
| when transferee, certificate must show name of deceased | 58 | 81 |
| has no power of sale as such of land registered in his name | 74 | 87 |
| sale made by must be confirmed | 74 | 87 |
| decree confirming, conclusive evidence of regularity | 74 | 87 |
| certificate issued to purchaser, what to contain | 74 | 87 |
| (60) Order for certificate on confirmation | | 88 |
| if power of sale given executor by will, court will direct registrar to enter words "with power of sale" | 75 | 88 |
| (61) Order that such words be registered | | 88 |
| sale must be confirmed | 75 | 88 |
| (62) Order in decree confirming for certificate | | 88 |
| certificate conclusive evidence in favor of all depending thereon | 76 | 88 |
| **False swearing—** | | |
| how punished | 112 | 109 |
| **Fees—** | | |
| allowed registrar under this act | 100 | 103 |
| how accounted for and disbursed | 100 | 103 |
| **Fee simple—** | | |
| required for initial registration, note | | 21 |
| must be registered before any lesser estate can be | 7 | 38 |
| estate of deceased person may be registered in Probate proceedings | 46 | 74 |
| **Felony—** | | |
| in relation to registered land, and penalty | 111 | 108 |
| no conviction to affect remedy at law | 113 | 109 |
| **Forging—** | | |
| seal of registrar, penalty for | 112 | 109 |
| conviction for not to affect remedy at law or equity | 113 | 109 |
| **Forms—** | | |
| table of | | 113 |
| **Fraud—** | | |
| in procuring registration | 34, 36 | 71, 72 |
| same remedies for, as though land not registered | 37, 106 | 72, 107 |
| but not to affect title of registered owner who has taken bona fide | 37, 106 | 72, 107 |
| forged deed void, but title of bona fide registered owner not affected | 38 | 72 |
| person defrauded has claim on assurance fund | 105, Sub. 2 | 106 |
| penalty for procuring certificate or entry by | 111 | 108 |

| | Section | Page |
|---|---|---|
| **Grantee—** | | |
| full name, etc., to be shown in instrument | 54 | 79 |
| **Guaranty—** | | |
| behind a registered title | | 5 |
| **Guardian—** | | |
| application for registration made by | 5 | 23, 28 |
| shall bring action to protect rights of ward | 45 | 74 |
| **Guardian ad litem—** | | |
| appointed for minors, etc. | 13 | 47 |
| (21) Appointment of | | 48 |
| **Hand writing—** | | |
| penalty for forging | 112 | 109 |
| **Highway—See Public way** | | |
| **Homestead—** | | |
| petition must state as to | 5 | 22 |
| what it consists of, note | | 22 |
| both spouses must join in registration of | 5 | 23 |
| and in transfer of | 56 | 81 |
| noted in decree | | 51 |
| noted in certificate | | 64 |
| **Husband or wife—** | | |
| name and residence set forth in petition | 5 | 21, 26 |
| name of in decree | 15 | 49, 51 |
| both must join in registration of community or homestead property | 5 | 23 |
| rights of, set forth in decree | 15 | 49 |
| names of both in certificate of commuity property | 15 | 50 |
| both must join in transfer of homestead | 56 | 81 |
| and in disposition of community property | 57 | 81 |
| **Illinois—** | | |
| operation of Torrens system in | | 8 |
| **Imprisonment—** | | |
| when person under, may commence suit for loss through this act | 105, Sub. 3 | 107 |
| for felony and forgery | 111, 112 | 109 |
| **Incumbrances—See Liens** | | |
| **Indices—** | | |
| of property, how kept by registrar | 102 | 104 |
| of names, how kept | 103 | 105 |
| **Infant—See Minor** | | |
| **Ink—** | | |
| india and indelible may be required in registration | 110 | 108 |
| registrar must use in new certificate and memorials | 110 | 108 |
| **In rem—** | | |
| decree for registration in nature of decree in rem | 16 | 53 |
| **Insane person—See Disability** | | |
| **Insolvency proceedings—See Assignee in Insolvency; and Probate Proceedings** | | |
| **Instruments of transfer—See also Transfer** | | |
| made in any authorized form | 48, 53 | 76, 79 |
| endorsement on duplicate certificate sufficient to transfer | 53 | 79 |

| | Section | Page |
|---|---|---|
| duplicate certificate must be presented with instrument to registrar, except by order of court | 60 | 83 |
| (56) Order allowing memorandum without duplicate | | 83 |
| what notations on, when offered for filing | 47, 53 | 75, 79 |
| not to be filed unless notations made | 47 | 75 |
| (47) Notations on back of | | 76 |
| what to contain or have endorsed on | 54 | 79 |
| how marked by registrar when filed | 50 | 78 |
| retained and kept in registrar's office | 51 | 78 |
| shall take effect only by way of contract and as authority to register | 55 | 80 |
| when filed with duplicate certificate in office of registrar, transfer complete | 48 | 76 |
| thereupon certificate will be issued and transfer noted on certificate | 48 | 77 |
| subject to tax sale, if shown in last certificate | 56 | 81 |
| conveying homestead or community property both spouses must join | 56, 57 | 81 |
| intended to create a charge, how endorsed and entered on certificate | 60 | 83 |
| when in duplicate only one part need be filed, notations on other parts | 61 | 83 |
| certified copies of, how marked, force and effect of | 62 | 84 |
| in trust or conditional. See **Trust Deeds.** | | |
| may be returned to applicant, when | 20 | 61 |
| forged or made by person under disability, registration void | 38 | 72 |
| but title of bona fide registered owner not affected | 38 | 73 |
| certified copies furnished by registrar | 51 | 78 |
| which shall be received in place of original | 52 | 79 |
| penalty for alteration of, etc. | 111 | 108 |
| penalty for forging | 112 | 109 |
| **Issue of fact—** | | |
| raised by pleadings, may be tried by jury | 14 | 49 |
| **Judgment or decree—** | | |
| proceedings when registered land sold to satisfy | 88 | 95 |
| when to become a lien on registered land | 91 | 96 |
| satisfaction of, to be certified to registrar | 90, 96 | 96, 98 |
| (74) Certificate of satisfaction | | 98 |
| appeal from, registrar notified. See **Appeal.** | | |
| **Jury—** | | |
| may try issue of fact rased by pleadings | 14 | 49 |
| **Lands—See also Registered land** | | |
| what brought under operation of this act | 5 | 20 |
| what included in one application for registration, note | | 20 |
| what interest must applicant have in, notes | 5 | 20 |
| occupancy of. See **Occupancy.** | | |
| single parcel, lyingpartly in two or more counties | 5 | 23 |
| description and assessed value given in petition | 5 | 22 |
| when map or plat on file, how described | 6 | 31 |
| when plat of, must accompany application | 6 | 31 |
| if bounded by public or private way | 6 | 32 |
| (5) Order for survey to determine line of | | 37 |
| if bordering on navigable stream or arm of the sea | 13 | 47 |
| adjoining. See **Adjoining Lands.** | | |
| when State has claim in, adverse to applicant | 13 | 48 |

| | Section | Page |
|---|---|---|
| accurate description must be given in decree | 15 | 49 |
| description and character of ownership given in certificate | 15 | 50 |
| belonging to estate of decesed person how registered, See **Executor.** | | |
| registration of. See **Registration.** | | |
| when deemed to be registered | 31 | 70 |
| registered lands. See **Registered Land.** | | |
| **Land register docket—See Books** | | |
| **Land Title Law—Enacted by People** | | 19 |
| **Lease—See also Instruments of Transfer** | | |
| when registered land subject to, though not noted on last certificate | 34 | 71 |
| assignment of. See **Charge on Land.** | | |
| **Levy—See Execution** | | |
| **Lien—See also Charge on Land** | | |
| petition shall state as to | 5 | 22 |
| noted in decree | 15 | 49 |
| by book and page of record | 15 | 50 |
| shown in certificate | 15, 23, 24 | 50, 63, 65 |
| on registered land. | | |
| land subject to what unregistered | 34 | 71 |
| deemed subject to this act | 44 | 73 |
| time limit for asserting adverse | 45 | 74 |
| becomes charge upon registration | 59 | 82 |
| on undivided interest—when land partitioned | 87 | 95 |
| for public improvements. See **Ordinance.** | | |
| when judgment becomes | 91 | 96 |
| when levy becomes | 92 | 96 |
| when mechanics lien attaches | 93 | 97 |
| not to affect until entered on register | 95 | 98 |
| **Limitation, title by—See Prescription** | | |
| **Lis pendens—** | | |
| filing of, not required when | 10 | 40 |
| when suit, etc., deemed to be | 89 | 95 |
| **Loss of duplicate certificate—** | | |
| certified copy of original issued | 27 | 67 |
| no transfer of land until | 27 | 67 |
| (39) Application for certified copy | | 67 |
| (40) Order granting without notice | | 67 |
| (41) Notice of application ordered | | 68 |
| (42) Order granting after hearing | | 68 |
| **Lunatic—See Disability** | | |
| **Mail—** | | |
| when notice of filing petition may be sent by | 12 | 43 |
| (18) Affidavit of, by other than sheriff | | 46 |
| how notices, etc., served by, after registration | 54 | 79 |
| (51) Certificate of service by | | 80 |
| **Map or plat—** | | |
| how referred to in petition | 6 | 31 |
| no copy need be attached to notice of petition | 12 | 43 |

| | Section | Page |
|---|---|---|
| **Marriage—** | | |
| statement made as to, in petition | 5 | 21, 26 |
| in decree | 15 | 49, 51 |
| in certificate | 23 | 63, 64 |
| owner's name changed by. See **Certificate of Title.** | | |
| **Massachusetts—** | | |
| torrens system in | | 7 |
| **Mayor—** | | |
| when notice of petition given to | 13 | 47 |
| **Mechanics lien—See Lien** | | |
| **Memorial—** | | |
| lesser estate to be entered on certificate as | 7, 60 | 38, 82 |
| form for | | 65 |
| carried forward on all certificates | 43 | 73 |
| on cancelled certificates | 26 | 66 |
| (37) when one issued for several | | 66 |
| (38) When several issued for one | | 66 |
| binding on owner and all claming under him | 60 | 83 |
| duplicate certificate presented before entry of | 60 | 83 |
| (56) Order allowing entry without | | 83 |
| court may determine form of | 99 | 102 |
| (81) Form referred to court by registrar | | 102 |
| (82) Same on suggestion of party | | 102 |
| (83) Order prescribing form | | 102 |
| must be made with india or indelible ink | 110 | 108 |
| **Minor—See also Disability** | | |
| how application for registration made by | 5 | 21, 28 |
| decree to state age and custody of estate | 15 | 49 |
| certificate to state age | 23 | 63 |
| **Mortgage—See also charge on Land** | | |
| how marked when filed with registrar | 50 | 78 |
| like forms as in other cases | 53 | 79 |
| takes effect as contract and authority to register | 55 | 80 |
| on filing of, land becomes mortgaged | 55 | 80 |
| upon registration becomes a lien | 59 | 82 |
| notations made by registrar on filing of | 60 | 82 |
| how foreclosed | 65 | 85 |
| (58) Notice of suit to foreclose | | 85 |
| on undivided interest, when land partitioned | 87 | 95 |
| **Municipal corporation—** | | |
| becoming purchaser at tax sale. See **Tax Sale.** | | |
| **Names—** | | |
| of applicants for registration | 5 | 21 |
| of persons holding adverse interests | 5 | 22 |
| correction or change of in certificate. See **Certificate of Title.** | | |
| indices of, to be kept | 103 | 105 |
| **Navigable stream—** | | |
| when land borders on, notice | 13 | 47 |
| **Newspaper—** | | |
| designated by the court for publication of notices, etc. | 12 | 42 |
| (11) Order designating | | 41 |

| | Section | Page |
|---|---|---|
| **Next friend—** | | |
| when action brought by | 45 | 74 |
| **Notation—** | | |
| on instruments filed with registrar | 47, 54 | 75, 79 |
| (47) On back of deeds, etc. | | 76 |
| **Notice—** | | |
| of filing of petition for registration. | | |
| when court will order | 11 | 40 |
| (11) Order for | | 41 |
| (12) Same on report of examiner | | 41 |
| (13) Order refusing and dismissing petition | | 42 |
| (14) Same on report of examiner | | 42 |
| what to contain, to whom directed, how served | 12 | 42 |
| (15) Notice of filing petition | | 44 |
| (16) Publication of, approved | | 45 |
| service of, how made | 12 | 42, 43 |
| on defendant consenting | 12 | 44 |
| must in all cases be published | 12 | 42 |
| who served personally | 12 | 43 |
| who served by mail | 12 | 43 |
| on owners of adjoining land | 12 | 43 |
| by sheriff or other person | | 45 |
| (17) Affidavit of, by other than sheriff | | 46 |
| (18) Same by mail | | 46 |
| on whom when line of way to be determined | 13 | 47 |
| when land borders on stream or sea | 13 | 47 |
| when State has adverse interest | 13 | 47 |
| of intention to include registration in other proceedings | 17 | 54 |
| (23) Application for | | 55 |
| (24) Order for | | 55 |
| (25) Notice of intention | | 55 |
| how published and served | 17 | 55 |
| of filing petition for registration in probate proceedings | 46 | 74 |
| kept in registrar's office | 51 | 78 |
| how served by mail after registration | 54 | 79 |
| (51) Certificate of service by mail | | 80 |
| different or other service may be ordered | 54 | 80 |
| (52) Order for | | 80 |
| of change of address of grantee in deed | 54 | 79 |
| (50) Notice of | | 80 |
| of suit to foreclose mortgage | 65 | 85 |
| (58) Notice of pendency of | | 85 |
| of purchase of registered land at tax sale. See **Tax Sale.** | | |
| of pendency of suit, etc., to create lis pendens | 89 | 95 |
| of mechanics lien | 93 | 97 |
| of ordinance for improvement of street, etc. See **Ordinance** | | |
| of filing petition for alteration of certificate | 98 | 99 |
| (77) Order for summons | | 100 |
| **Objection—** | | |
| to registration by interested person | 12 | 43 |
| (46) Answer of, objecting | | 46 |

| | Section | Page |
|---|---|---|
| **Occupancy of Land—** | | |
| stated in petition | 5 | 22, 28 |
| must be proven as alleged, note | | 22 |
| occupant served with notice of petition | 12 | 43 |
| character of, stated in decree | 51 | 52 |
| **Occupation—** | | |
| of applicant for registration stated in petition | 5 | 21, 25, 26 |
| **Ordinance—** | | |
| for public improvement, notice filed with registrar | 94 | 97 |
| (71) Notice of | | 97 |
| (72) Notice of repeal | | 97 |
| (73) Notice of lien satisfied | | 98 |
| **Owner—** | | |
| may bring land under operation of this act | 5 | 20 |
| who may unite in one application, note | | 20 |
| Registered owner | | |
| holds land subject to what estates | 34, 36 | 71, 72 |
| when not affected by fraud or forged deed | 37, 38 | 72 |
| nor by unregistered estate | 39 | 73 |
| register as evidence that he is entitled to land | 42 | 73 |
| **Ownership—** | | |
| character of shown in certificate | 15 | 50 |
| **Papers—** | | |
| kept in office of registrar | 51 | 78 |
| taken out on subpoena duces tecum | 51 | 78 |
| **Partition of registered land—** | | |
| owner may bring action for | 104 | 105 |
| certificate conclusive proof of valid title | 41 | 73 |
| all persons shown on register made parties | 84 | 94 |
| certificate issued on report of commissioners confirmed | 85 | 94 |
| or on sale of land | 86 | 94 |
| (95) Certificate of officer making sale | | 95 |
| lien on undivided interest attaches to what | 87 | 95 |
| registration in proceedings for—See **Registration.** | | |
| **Penalty—** | | |
| for fraud in procuring registration | 111 | 108 |
| for forging seal of registrar | 112 | 109 |
| **Petition for registration—** | | |
| basis of registry proceedings | | 16, 17 |
| to Superior court, filed with county clerk | 5 | 21 |
| facts to be set forth in | 5, 6 | 21, 22, 31 |
| caption for | | 23 |
| (1) Petition for registration | | 24 |
| (2) Same—personal form | | 25 |
| (3) General petition for registration | | 26 |
| endorsed by clerk and entered in land register docket | 6 | 36 |
| when adverse possession claimed, what alleged in | 6 | 33 |
| how amended | 9 | 39 |
| (9) Order for amended | | 39 |
| (10) Same on motion of applicant | | 39 |
| date of filing deemed date of registration | 15 | 50 |
| filed in probate proceedings. See **Registration.** | | |
| may be withdrawn by applicant | 20 | 60 |
| certified copies filed in counties where any part of land lies | 46 | 75 |

| | Section | Page |
|---|---|---|
| **Plat—See Map** | | |
| **Policy of title insurance—** | | |
| made starting point for abstract of title | 6 | 35 |
| **Possession—See Adverse possession.** | | |
| no length of shall give adverse title after registration | 35 | 72 |
| in action for, certificate evidence of valid title | 41 | 73 |
| character of stated in petition | 6 | 33 |
| how proven, note | | 35 |
| **Power of attorney—See Attorney in fact** | | |
| **Power of sale—** | | |
| when given in trust deed, trustee may deal with land as owner | 68 | 86 |
| how noted on certificate | 68 | 86 |
| when none given in trust deed | 69 | 86 |
| of trustee under will | 70 | 86 |
| when given in will to executor. See Executor. | | |
| **Prescription—** | | |
| title by, note | | 35 |
| **Private way—** | | |
| when land is bounded by | 6 | 32 |
| **Probate proceedings—** | | |
| registration of title in. See Registration. | | |
| change in status of title of registered land made in, as provided in the law of the state | 71 | 86 |
| court in its decree will direct registrar to issue certificate | 72 | 87 |
| (59) Order in decree, for certificate of memorial | | 87 |
| certified copy of decree also deed, etc., and decree of confirmation filed with registrar | 73, 74 | 87 |
| **Procedure—** | | |
| for bringing land under this act | | 16 |
| **Process—** | | |
| notice of, how given by mail | 54 | 79 |
| levy of, certified to registrar | 92 | 96 |
| (70) Certificate of levy | | 96 |
| disposal of, certified to registrar | 90, 96 | 95, 98 |
| (76) Certificate of release | | 98 |
| **Publication of notice—See Notice** | | |
| **Public improvements—See Ordinance** | | |
| **Public way—See also, Street** | | |
| when land is bounded by, what stated in petition | 6 | 32, 38 |
| (5) Order for survey to determine line of | | 37 |
| to whom notice to be given | 13 | 47 |
| when owner holds subject to right of though not noted on certificate | 34 | 71 |
| **Purchasers—** | | |
| when not required to inquire into acts of trustee, grantor | 68 | 86 |
| when not bound to inquire into regularity of sale | 74 | 87 |
| of registered land at tax sale. See Tax sale. | | |
| at sale in partition, certificate | 86 | 94 |
| at sale of registered land sold on judgment | 88 | 95 |
| title of, not affected by proceedings to correct certificate | 98 | 99 |

| | Section | Page |
|---|---|---|
| **Quieting title—** | | |
| decree ordering registration shall have effect of.... | 16 | 53 |
| registration may be included in action for. **See registration.** | | |
| **Receipt—** | | |
| to be given for certificate of title.....22, | 30 | 62, 70 |
| printed or pasted in book ..... | 22 | 62 |
| form ..... | | 63 |
| evidence of genuineness of owner's signature..... | 22 | 62 |
| **Receiver—** | | |
| shall file certified copies of proceedings ..... | 73 | 87 |
| **Recorder of county—** | | |
| shall be registrar of titles ..... | 1 | 19 |
| official bond of, shall apply to duties as registrar, and deputies ..... | 2 | 19 |
| duties of, as registrar. See **Registrars.** | | |
| recovery on bond of only for gross negligence, etc. .. | 2 | 19 |
| may appoint deputy registrars. See **Registrars.** | | |
| **Recovery of land—** | | |
| action for, of registered land must be brought within one year ..... | 45 | 74 |
| **Referee—** | | |
| sending case to, to report facts, note ..... | 18 | 57 |
| (27) Order ..... | | 57 |
| when deputy registrar may act as ..... | 108 | 108 |
| **Register of titles—** | | |
| form for ..... | | 64 |
| kept by registrar, what entered in ..... | 29 | 70 |
| and certified copies of, received as evidence..... | 42 | 73 |
| correction and alteration of, how made. See **Certificate of title.** | | |
| penalty for fraudulently procuring entry on ..... | 111 | 108 |
| **Registered land—See Lands** | | |
| guaranty behind title to ..... | | 5 |
| no adverse title acquired, by possession ..... | 35 | 72 |
| purchaser of, need not inquire into registration..... | 36 | 72 |
| dealings with, deemed subject to terms of this act.. | 44 | 73 |
| no action for recovery of, after one year..... | 45 | 74 |
| how transferred. See **Instruments of transfer.** | | |
| sale of, by executor. See **Executor.** | | |
| sale of, for tax or assessment. See **Tax sale.** | | |
| partition of. See **Partition.** | | |
| lien on. See **Lien.** | | |
| public improvement made on. See **Ordinance.** | | |
| right of eminent domain in, not affected by this act. | 101 | 104 |
| may be platted or subdivided. See **Subdivision.** | | |
| **Registered Owner—See Owner** | | |
| **Registrar—** | | |
| recorder of county shall be ..... | 1 | 19 |
| official bond of ..... | 2 | 19 |
| liability on bond ..... | 2 | 19 |

| | Section | Page |
|---|---|---|
| governed by laws relating to recorders | 1 | 19 |
| is a county officer | 1 | 19 |
| prohibited from practicing law | 4 | 19 |
| how act as searcher of titles | 4 | 19 |
| shall issue certificate of title, when | 15, 22 | 50, 62 |
| books to be kept by | 22, 29 | 62, 70 |
| complaint against, may be filed in the superior court | 33 | 71 |
| duty of, in marking deeds and other instruments filed in his office | 50, 60, 63 | 78, 82, 84 |
| authorized to cancel memorial, when | 96 | 98 |
| may apply for correction or change in certificate | 98 | 99 |
| may refer form of memorial to court for determination | 99 | 102 |
| fees of, for services under this act | 100 | 103 |
| shall keep property and name indices | 102, 103 | 104, 105 |
| may appoint deputies. See **Deputy registrar.** | | |
| duty of, to see that documents are made out with view to permancy | 110 | 108 |
| remedy in law against him and his bond, not affected by conviction of felony | 113 | 109 |
| rules and regulations made, not to work hardship | 114 | 109 |
| **Registration—** | | |
| advantages of system | | 5 |
| in other States | | 7 |
| application for. See **Application for registration.** | | |
| petition for. See **Petition for registration.** | | |
| what lands brought under. See **Lands.** | | |
| of a tax title. See **Tax title.** | | |
| assent to. See **Assent.** | | |
| party interested may object to | 12 | 43 |
| (19) Answer objecting to | | 46 |
| ordered by court on hearing | 14 | 49 |
| decree for registration | 15 | 49 |
| what to be stated in | 15 | 49 |
| in convenient form for transcription on certificate | 15 | 50 |
| may be appealed from | 15 | 50 |
| filed with clerk and certified copy with registrar | 15 | 50 |
| (22) Decree for registration | | 50 |
| shall be in nature of decree in rem, quiet title, and conclusive against rights of all persons | 16 | 53 |
| date of, deemed date of registration | 15 | 50 |
| not entered until after report of examiner | 19 | 57 |
| effected by filing decree and issuing certificate | 15 | 50 |
| when land deemed to be registered | 31 | 70 |
| when transfer and other dealings deemed registered but relate back to time of filing instruments in registrator's office | 32 | 70 |
| confers title subject to what estates | 34 | 71 |
| adverse title not acquired by any length of possession | 35 | 72 |
| void if instrument forged or made by person under disability | | 38 |
| but not to affect title of bona fine subsequent purchaser | | 38 |
| gives title against unregistered claims | 39 | 73 |
| bringing land under implies agreement, etc | 44 | 73 |
| of land lying partly in another county | 46 | 75 |
| registration in other proceedings | 17 | 54 |
| (23) Application for notice of intention | | 55 |
| (24) Order that notice of intention be given | | 55 |
| (25) Notice of intention | | 55 |
| order for registration, how made | | 56 |

| | Section | Page |
|---|---|---|
| **Release or satisfaction—See Charge on land** | | |
| **Report—** | | |
| to be made by examiner of titles. See **Examiner of titles.** | | |
| of commissioners in partition must be confirmed .... | 85 | 94 |
| **Residence—** | | |
| of applicant given in petition ..... | 5 | 21, 25, 26 |
| noted in decree ..... | | 51 |
| noted in certificate ..... | | 64 |
| of grantee contained in, or endorsed on instrument.. | 54 | 79 |
| change of endorsed by registrar ..... | 54 | 79 |
| (50) Notice of change of address ..... | | 80 |
| **Reversal—** | | |
| of judgment or order certified to registrar.....90, 96 | | 96, 98 |
| **Right of way—** | | |
| when land subject to though not noted on certificate | 34 | 71 |
| **Satisfaction—See Release** | | |
| **Sea—** | | |
| when land borders on arm of, notice..... | 13 | 47 |
| **Seal—** | | |
| of registrar, penalty for forging ..... | 112 | 109 |
| **Searcher of titles—See Examiner of titles** | | |
| **Separate property—** | | |
| defined, note ..... | | 22 |
| court will determine as to ..... | 14 | 49 |
| certificate shall show as to..... | 15 | 50 |
| **Severalty—** | | |
| registration of land held in, by one of applicants.. | 5 | 22 |
| **Service—** | | |
| of notices. See **Notice.** | | |
| of process. See **Process.** | | |
| proof of made by certificate of clerk, when ..... | 54 | 79 |
| **Sewer—See Street** | | |
| **Sheriff—** | | |
| to certify levy to registrar ..... | 92 | 96 |
| (70) Certificate of levy ..... | | 96 |
| to certify disposal of process to registrar.....90, 96 | | 95, 98 |
| (75) Certificate of release ..... | | 98 |
| **Sidewalk—See Street** | | |
| **Signature—** | | |
| genuineness evidenced by receipt ..... | 22 | 62 |
| **Spouse—See Husband or wife** | | |
| **State—** | | |
| tax title derived through sale by..... | 8 | 38 |
| having adverse title, notice of petition ..... | 13 | 47 |
| becoming purchaser at tax sale..... | 77 | 89, 38 |
| subrogated to rights of plaintiff, when.....105, Sub. 2 | | 106 |

| | Section | Page |
|---|---|---|
| **State Controller—** | | |
| shall audit and certify amount ordered paid from assurance fund | 105, Sub. 2 | 106 |
| **State treasurer—See Assurance fund** | | |
| **Stream—See Navigable stream** | | |
| **Street—See also Public way** | | |
| survey must show relation of land to | 6 | 32 |
| improvement of. See **Ordinance.** | | |
| **Subdivision—** | | |
| how plat of, referred to in petition | 6 | 31 |
| of registered land, what certificates given | 49 | 77 |
| (49) Endorsement on certificate of tract | | 78 |
| made as in case of unregistered land | 109 | 108 |
| when owner may furnish forms of certificates | 109 | 108 |
| **Substitution of parties—See Death; and Transfer** | | |
| **Suit—** | | |
| time limitation of, for recovery of land, etc | 45 | 74 |
| to foreclose mortgage. See **Mortgage.** | | |
| against registered land, when deemed lis pendens | 89 | 95 |
| for compensation out of assurance fund. See **Assurance fund.** | | |
| disposal of certified to registrar | 96 | 98 |
| (74) Certificate of clerk of | | 98 |
| in exercise of right of eminent domain | 101 | 104 |
| by person deprived of land through this act. See **Assurance fund.** | | |
| **Summons—** | | |
| order for on petition to correct certificate | 98 | 99 |
| (77) Order that summons issue | | 100 |
| (78) Form of summons | | 101 |
| **Supervisors of county—** | | |
| notice to, when line of public way to be determined | 13 | 47 |
| furnish books, etc., for carrying out provisions of this act | 100, Sub. 3 | 104 |
| approve compensation of deputy registrars | 108 | 107 |
| **Sureties—See Bond** | | |
| **Survey—** | | |
| when required | | 16 |
| when made and what to show | 6 | 31, 32 |
| ordered by court at any time | 6 | 32 |
| (4) Order for | | 36 |
| (5) Order for, to determine line of way | | 37 |
| California statutes relating to | | 110 |
| general requirements | | 112 |
| form of report of | | 112 |
| **Swearing—** | | |
| penalty for false | 112 | 109 |
| **Tax collector—** | | |
| shall file notice when State or Municipality becomes purchaser at tax sale | 77 | 89 |
| (64) Notice of land sold to State | | 90 |

| | Section | Page |
|---|---|---|
| **Tax deed—** | | |
| of registered land, shall not be issued unless notice of sale filed | 77 | 89 |
| may be presented to registrar and memorial entered | 78 | 90 |
| shall have effect only as agreement to transfer | 78 | 90 |
| except when issued to state | 78 | 90 |
| holder of, must file application for a decree | 78 | 90 |
| (65) Application for decree | | 91 |
| (66) Order that notice be given of application | | 92 |
| (67) Notice of application | | 92 |
| court will find ownership and enter decree | 80 | 93 |
| (68) Decree showing title under tax deed | | 93 |
| when issued to State or Municipality | 81 | 93 |
| **Taxes—** | | |
| payment when adverse possession alleged in petition | 6 | 33 |
| how proven, note | | 33 |
| when registered land held subject to, though not noted on certificate | 34 | 71 |
| sale for. See **Tax sale.** | | |
| **Tax sale—** | | |
| general law declares all delinquent land sold to State | | 38 |
| if not redeemed sold by State after five years | | 39 |
| of registered land | | |
| when shown in last certificate, transfer subject to | 56 | 81 |
| fact shown on new certificate, note | | 65 |
| notice of must be filed by purchaser | 77 | 88 |
| (63) Notice of purchase | | 90 |
| when filed by tax collector | 77 | 89 |
| (64) Notice of sale to State | | 90 |
| memorial of notice and copies mailed | 77 | 89 |
| when sold to municipality or State hereafter new certificate issued | 81 | 93 |
| on certificate of redemption, memorial of sale cancelled | 83 | 94 |
| **Tax title—** | | |
| first registration of | 8 | 38 |
| when derived through direct purchase at tax sale, note | | 38 |
| five years adverse possession required, note | | 38 |
| when derived through purchase from State, note | | 38 |
| five years possession not required, note | | 39 |
| application for registration, how made, note | 27 | 27 |
| of registered land, how certificate obtained. See **Tax deed.** | | |
| **Tenants in common—** | | |
| how named in petition, note | | 26 |
| certificates to, how made | 25 | 66 |
| lien given by one, attaches how, on partition | 87 | 95 |
| **Testator—** | | |
| power of sale given by. See **Executor.** | | |
| **Title—** | | |
| what required for registration, notes | | 20, 21 |
| may be established by chain or by prescription, notes | | 21, 33 |
| will be determined by court. See **Registration—decree.** | | |

| | Section | Page |
|---|---|---|
| to be examined into by examiner of titles | 19 | 57 |
| forever quieted by decree for registration | 16 | 53 |
| of registered owner. See **Owner.** | | |
| certificate of. See **Certificate of title.** | | |
| of registered land not affected by instrument, unless notations made thereon | 47 | 75 |
| not affected by lien until memorial entered | 95 | 98 |
| **Title insurance—** | | |
| policy of, starting point for abstract | 6 | 35 |
| **Torrens land title law—** | | |
| enacted in California | | 19 |
| former law declared constitutional | | 10 |
| **Torrens system—** | | |
| advantages of | | 5 |
| in other states | | 7 |
| **Torrens title—** | | |
| guarantee behind | | 5 |
| **Torrens title assurance fund—See Assurance fund** | | |
| **Tort—** | | |
| person not deprived of right of action in, by this act | 105, Sub. 2 | 106 |
| **Town—See City** | | |
| **Transfer—See also Instruments of transfer** | | |
| during proceedings for registration | 21 | 61 |
| (34) On transfer of interest, action continued | | 62 |
| (35) Same, transferee substituted | | 62 |
| not to be made when certificate lost, until new one issued | 27 | 67 |
| when deemed to be registered | 32 | 70 |
| person taking, need not inquire into circumstances of registration | 36 | 72 |
| of registered land, how effected. See **Instruments of transfer.** | | |
| of part only of land, certificate given | 49 | 77 |
| may be made by endorsement, on duplicate certificate, form given | 53 | 79 |
| made subject to tax sale, noted on last certificate | 56 | 81 |
| of homestead or community property, both spouses must join | 56, 57 | 81 |
| of charge on registered land, how made | 63 | 84 |
| (57) Memorial of | | 84 |
| (57a) Same, of transfer of part | | 84 |
| **Transferee of registered land—** | | |
| need not inquire into previous registration | 36 | 72 |
| affidavit to be furnished by | 58 | 81 |
| (53) Affidavit | | 82 |
| if executor or administrator, affidavit | 58 | 81 |
| (54) affidavit by executor | | 82 |
| if assignee or trustee | 58 | 81 |
| of charge on land entitled to certified copy of instrument | 63 | 84 |
| under deed from trustee, with power of sale, need not inquire into acts of trustee | 68 | 86 |

| | Section | Page |
|---|---|---|
| **Treasurer of State—See Assurance fund** | | |
| **Trust—** | | |
| noted in certificate | 24, 67 | 64, 65, 86 |
| unregistered, not to affect transferee of registered land | 36 | 72 |
| not to prevail against title of registered owner | 39 | 73 |
| **Trust deed—** | | |
| words "in trust" to be noted on certificate | 67 | 86 |
| when it contains the words "With power of sale" trustee may deal with land as the owner | 68 | 86 |
| when it does not contain words "With power of sale" trustee has no power to deal with land without order of court | 69 | 86 |
| **Trustee—** | | |
| power of sale under trust deed. See **Trust deed.** | | |
| under will has power to deal with land as his own, unless expressly withheld by terms of will | 70 | 86 |
| in bankruptcy. See **Assignee in insolvency.** | | |
| when transferee, name of insolvent or bankrupt stated in certificate | 58 | 81 |
| **Undertaking—See Bond, official** | | |
| **Unregistered estate—** | | |
| when registered owner not affected by | 34, 36, 39 | 71, 72, 73 |
| **Verification of abstracts** | 6 | 35 |
| **Way—See Public way** | | |
| **Wife—See Husband or wife** | | |
| **Will—** | | |
| excepted from provision making instrument of conveyance a contract only | 55 | 80 |
| power of sale by trustee under. See **Trustee.** | | |
| when executor has power of sale under. See **Executor.** | | |

LAW LIBRARY
UNIVERSITY OF CALIFORNIA
LOS ANGELES

UC SOUTHERN REGIONAL LIBRARY FACILITY
A 000 706 322 5